Printed for the use of the Colonial Office.

CO 879/119/12

African (South)
No. 1074.

CONFIDENTIAL.

SOUTH AFRICA.

CORRESPONDENCE

[December, 1918—December, 1921]

RELATING TO THE

CLAIM OF THE BRITISH SOUTH AFRICA COMPANY IN RESPECT OF ITS ADMINISTRATIVE EXPENDITURE IN SOUTHERN RHODESIA.

NOTE.—*This paper should be read with the Report of the Southern Rhodesia Commission of Inquiry (i.e., the "Cave" Commission) which, with certain of the correspondence, is published as* [*Cmd.* 1129]; *with the Minutes of its proceedings (Stationery Office Publication, May,* 1921); *with the First Report of the Rhodesia Committee (i.e., the "Buxton" Committee) published as* [*Cmd.* 1273]; *and with African No.* 1085.

COLONIAL OFFICE,

October, 1922.

Printed for the use of the Colonial Office.

African (South)
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[December, 1918—December, 1921]

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COLONIAL OFFICE,

October, 1922.

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2	To the High Commissioner	Telegram Confidential	December 18	Proposes the appointment of a Commission to inquire into the amount due to the British South Africa Company in respect of its administrative expenditure in Southern Rhodesia, and requests observations.	2
3	To the British South Africa Company	—	December 21	Notes proposal in No. 1 regarding portions of unalienated land of Southern Rhodesia, and is not aware of anything in the judgment of the Privy Council which prevents contemplated action.	2
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Serial No.	From or to whom.	Despatch No., &c.	Date.	Subject.	Page.
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13	Ditto	Telegram Confidential	August 23	Considers it desirable that a specially competent man should be appointed to watch proceedings in South Africa of the Southern Rhodesia Commission in the interests of the Crown: requests suggestions.	6
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15	To the High Commissioner	Telegram Confidential	August 30	Hesitates, for reason stated, to accept Mr. Phear, and suggests that the Resident Commissioner should represent the Crown.	7
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17	To the High Commissioner	Telegram	September 8	Approves selection of Resident Commissioner, who should report immediately at the conclusion of proceedings.	7
18	To the British South Africa Company	—	October 7	Proposes, with the assent of the Directors, to have on behalf of the Crown an independent valuation of the land utilized by the Company for its own undertakings, and suggests the appointment of Mr. J. P. Richardson as valuer and Mr. E. A. Hull as umpire.	7
19	To Treasury Solicitor	—	October 29	Encloses, with reference to No. 7, an extract from a letter from Mr. Wilson Fox, one of the Directors of the Company, enclosing a copy of one from Mr. Tait, Secretary to the Commission to Mr. Malcolm, another Director of the Company, setting forth certain points reserved for further argument in London; requests that the Attorney-General and other Counsel may be instructed to consider these points with a view to representing the Crown at such further meetings of the Commission as may be held on its return from South Africa.	8
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Serial No.	From or to whom.	Despatch No., &c.	Date.	Subject.	Page.
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23	The British South Africa Company	—	December 16	Replies to points raised in No. 22.	18
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25	Treasury Solicitor ...	—	January 27	States the difficulties experienced by the adviser of the Crown in connexion with the proceedings before the Commission which has been appointed to deal with the claim of the British South Africa Company to reimbursement of the expenses which it has incurred in the administration of Southern Rhodesia.	20
26	To Treasury Solicitor	—	February 6	Appreciates the difficulties experienced by the Attorney-General as explained in No. 25; states that the view of His Majesty's Government is that the Company's claim should be thoroughly investigated in as much detail as the Attorney-General considers advisable, and that he is at liberty to represent this view to the Commission.	25
27	To the High Commissioner	Telegram Confidential	February 6	States that it is improbable, for reasons indicated, that Report of the Commission will be available before the Southern Rhodesia elections if they take place early in April.	26
28	The British South Africa Company	—	April 17	Complains of the continued adjournments demanded by the Crown's legal representatives, which have prevented the Commissioners from bringing their inquiries to a conclusion; expresses anxiety of the Company to furnish all information required, and appeals for a decision before the Long Vacation.	26

Serial No.	From or to whom.	Despatch No., &c.	Date.	Subject.	Page.
			1920		
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30	To the British South Africa Company	—	June 17	States, in reply to No. 29, that the Secretary of State is in communication with the Treasury solicitor respecting the instructions to the valuers.	27
31	The British South Africa Company	—	August 23	Expresses concern at the prospect of further delay in issuing the report of the Commission, and inquires as to the intentions of the Government with regard to the further prosecution of the inquiry.	28
32	To the British South Africa Company	—	October 5	Regrets, in reply to No. 31, that, for reasons stated, it is not possible at present to indicate a date on which the sittings of the Commission could be resumed for the purpose of bringing the inquiry to a conclusion, but gives assurance that all possible despatch will be used by the Crown's advisers.	28
33	Ditto	—	December 15	Considers that the matter of valuation of land in Southern Rhodesia should be referred to Lord Cave's Commission for directions as to the procedure to be adopted in accordance with agreement, and suggests that the Company should take steps to bring the matter before the Commission accordingly.	29
34	The British South Africa Company	—	December 22	States that Directors have no objection to the course proposed in No. 33, and that the matter will be brought before the Commission.	29
			1921		
35	To Viscount Cave ...	—	January 20	Acknowledges receipt of the Report regarding the sum which would be due to the British South Africa Company for administrative expenditure in Southern Rhodesia; expresses warm appreciation of the Commission's services.	30
36	The British South Africa Company	—	January 21	Submits certain matters left unsettled by the Award of Lord Cave's Commission upon which, in the view of the Board, it would be highly desirable that directions should be given before the labours of the Commission are concluded.	30
37	To Viscount Cave ...	—	January 25	Transmits copy of No. 36 and asks to be supplied with the information desired by the Company.	31
38	To the British South Africa Company	—	January 25	Acknowledges No. 36, which is being referred to the Commission.	31

Serial No.	From or to whom.	Despatch No., &c.	Date.	Subject.	Page.
			1921		
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40	To Viscount Cave ...	—	February 12	Requests observations on certain points regarding the question of the lands and rights alienated by the Company for considerations other than cash.	34
41	Viscount Cave ...	—	February 22	Transmits, in reply to No. 37, a note on the several questions raised by the British South Africa Company; and replies to certain points raised in No. 40.	34
42	To the British South Africa Company	Confidential	March 10	Transmits copies of Nos. 37, 40 and 41, and draft of a public despatch relating to the principles adopted by the Commission in dealing with the questions raised in No. 36, which it is proposed to address to the High Commissioner, and inquires whether the Company concur in its terms.	35
43	To the High Commissioner	Confidential	March 12	Transmits copies of Nos. 36, 37, 39, 40, 41 and 42.	36
44	The British South Africa Company	Confidential	March 14	Concurs, subject to observations submitted in the draft despatch to the High Commissioner enclosed in No. 42.	36
45	Ditto	—	June 20	Transmits, with observations, accounts of the British South Africa Company for years ended 31st March, 1919, and 31st March, 1920; states that detailed schedules are available if desired of items described as movable assets, etc.; transmits also telegraphic correspondence regarding rates of depreciation in respect of buildings and telegraphs; asks for information as to whether accounts are accepted as correct.	37
46	To the British South Africa Company	—	August 12	Regrets that Secretary of State is not yet in a position to reply to No. 45, and asks to be supplied with copies of certain schedules.	38
47	The British South Africa Company	—	November 7	Sets forth statement of claims made by the Company regarding their rights under the report of the Judicial Committee of the Privy Council in the Southern Rhodesia Land case.	38
48	To Treasury... ...	—	November 14	Transmits copy of No. 47 and requests that it be referred to the Treasury Solicitor for the advice of the Law Officers on the points indicated and as to the reply to be returned to the Company.	40
49	To the British South Africa Company	—	December 20	Conveys the reply of the Law Officers of the Crown to the various points raised in No. 47.	40

Serial No.	From or to whom.	Despatch No., &c.	Date.	Subject.	Page
			1921		
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SOUTH AFRICA.

CORRESPONDENCE

[December, 1918—December, 1921]

RELATING TO THE

CLAIM OF THE BRITISH SOUTH AFRICA COMPANY IN RESPECT OF ITS ADMINISTRATIVE EXPENDITURE IN SOUTHERN RHODESIA.

58592

No. 1.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

[*Answered by No.* 3.]

The British South Africa Company,
Rhodesia House, 2, London Wall Buildings,
London, E.C.2, 3rd December, 1918.

SIR,

I AM directed to state, for the information of Mr. Secretary Long, that my Directors are desirous of regularizing the position as regards those portions of unalienated land of Southern Rhodesia which the British South Africa Company is utilizing for the purposes of its own commercial undertakings.

2. These areas, it will be remembered, were coloured purple on the map of Southern Rhodesia which was included among the papers laid before the Judicial Committee of the Privy Council in the course of the hearing of the recent reference. A schedule* is attached showing the extent of them and the date at which it was decided to set them apart for the Company's own purposes.

3. It follows from the report of the Judicial Committee that there is no difference between the legal position of the areas and that of the remainder of the unalienated land, but the Secretary of State will doubtless agree that it is not desirable that the ranching, citrus growing, and other agricultural operations which the Company is actively carrying on in those areas should be interfered with. Particulars of these operations will be found in the recent annual reports of the Company.

4. My Directors accordingly propose to regularize the position by granting the areas in question to a subsidiary company or companies to be formed for the purpose, all the shares in which will be issued to the British South Africa Company.

5. My Directors hope that the Secretary of State will agree that it would be reasonable that the value of the land should be estimated as at the dates when the Company decided to develop the various areas in question on its own account, since that is the value which it would have received had it alienated them to other parties at those dates. It will, of course, be necessary to refer to Rhodesia in order to arrive at a valuation of the land on this basis, for which purpose the same procedure will be resorted to as in the case of sales of land to other parties. The Crown will be credited with the amount of the valuation, which will thus fall to be deducted from the capital sum shown in the annexure to my letter of the 21st ultimo.†

I have, &c.,
A. P. MILLAR,
Acting Secretary.

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* Not printed (see No. 23). † No 1 in [Cmd. 1129].

58592

No. 2.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 11.55 a.m., 18th December, 1918.)

TELEGRAM.

[*Answered by No.* 4.]

CONFIDENTIAL. In view of recent judgment of Judicial Committee of Privy Council, British South Africa Company have represented desirability of agreeing, as soon as possible, amount due to them for their administrative expenditure in Southern Rhodesia. I propose to suggest to Treasury and Company appointment of independent Commission to investigate matter. Commission might consist of three experts, viz., one of high administrative experience, one lawyer of standing, and one high-class accountant. Should be glad to know whether you have any observations.—LONG.

58592

No. 3.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

SIR, Downing Street, 21st December, 1918.

I AM directed by Mr. Secretary Long to acknowledge the receipt of your letter of the 3rd instant,* regarding the disposal of those portions of the unalienated land of Southern Rhodesia which your Company is utilizing for the purposes of its commercial undertakings, and to state that he notes your Director's proposal, and is not aware of anything in the judgment of the Judicial Committee of the Privy Council which prevents the contemplated action.

2. As regards the question raised in the fifth paragraph of your letter, I am to add that Mr. Long is unable at present to give his view as to the value at which the land should be estimated, but that he will deal with this point when replying on the question raised in your letter of the 21st ultimo,† as to which he hopes to communicate with you shortly.

I am, &c.,
HENRY LAMBERT.

62481

No. 4.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 4.30 a.m., 25th December, 1918.)

TELEGRAM.

CONFIDENTIAL. Your telegram 19th December,‡ Confidential; administrative expenditure of Southern Rhodesia. I think that investigations by a Commission very desirable. Presume one, at least, of members, or at any rate Secretary, will have special knowledge of Rhodesian affairs, and it would seem expedient that in any case Commission, after studying accounts and other material submitted by British South Africa Company and Colonial Office in London, should visit Rhodesia, in order to test its provisional conclusions by inquiry on the spot. This would also have advantage of enabling representatives of Rhodesian public to be heard, which seems important if there is any possibility of people eventually having to assume any liability for accumulated deficits; you will, no doubt, consider whether terms of reference can be made to include decision of question whether interest payable to Company on deficits.—BUXTON.

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* No. 1. † No. 1 in [Cmd. 1129.]. ‡ No. 2.

40946

No. 5.

COLONIAL OFFICE to THE RIGHT HONOURABLE VISCOUNT CAVE, THE RIGHT HONOURABLE LORD CHALMERS, AND SIR W. B. PEAT.

[MY LORD,] [SIR,] Downing Street, 18th July, 1919.

I AM directed by Viscount Milner to transmit to you the accompanying document signed by Lord Milner, appointing you to be a member of the Commission to determine the amount due to the British South Africa Company in respect of their administrative expenditure in South Rhodesia.

I have, &c.,
G. V. FIDDES.

Enclosure in No. 5.

WHEREAS under and by virtue of an Order of His Majesty in Council dated the 16th day of July, 1914, the question of the ownership of the unalienated land in Southern Rhodesia has been the subject of a special reference to the Judicial Committee of the Privy Council;

And whereas the report of the Judicial Committee dated the 29th day of July, 1918, *inter alia*, stated that so long as the British South Africa Company continues to administer Southern Rhodesia under His Majesty, the Company is entitled to dispose of the unalienated lands in due course of administration, and to apply the monies or revenues derived therefrom in duly reimbursing all proper outlays on administrative account in any current year or in past years, and further, if the Company's administration of Southern Rhodesia should be determined by His Majesty, the Company would have the right to look to the Crown to secure to it, either out of the proceeds of further sales of the lands by whomsoever made, or if His Majesty should grant away these lands or the proceeds to others then from public funds, the due reimbursement of any outstanding balance of aggregated advances made by the Company for necessary and proper expenditure upon the administration of Southern Rhodesia;

And whereas by an Order of His Majesty in Council dated the 2nd day of August, 1918 (a copy whereof is appended hereto) His Majesty was pleased to approve of the said report;

And whereas the British South Africa Company has asked that the amount due to it for its administrative expenditure should be determined at the earliest possible moment, and submitted on the 21st of November, 1918, and the 7th day of July, 1919, provisional statements* (copies whereof are appended hereto) of net expenditure by the Company in connexion with Southern Rhodesia on account of the Crown, up to the date of the Company's latest balance sheet, that is to say, the 31st day of March, 1918;

Now therefore I, Viscount Milner, P.C., G.C.B., G.C.M.G., His Majesty's Secretary of State for the Colonies, appoint you, the Right Honourable Viscount Cave, P.C., the Right Honourable Lord Chalmers, P.C., G.C.B., Sir William Barclay Peat, to be a Commission (whereof Viscount Cave shall be the Chairman) to examine the said statements of the British South Africa Company, and to investigate the records and accounts of the Company, in London, and in Rhodesia, and to make all such inquiries as may seem to you desirable, and to take an account of what would be due to the Company in accordance with the said Report of the Judicial Committee of the Privy Council if the administration of Southern Rhodesia by the Company had been determined on the 31st day of March, 1918.

I appoint Hugh Nimmo Tait, Esquire, to be the Secretary to the Commission.

MILNER

17th July, 1919.

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* Enclosures in Nos. 1 and 2 in [Cmd. 1129.].

40946

No. 6.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

[*Answered by No.* 8.]

SIR, Downing Street, 18th July, 1919.

I AM directed by Viscount Milner to acknowledge the receipt of your letter of the 11th instant,* and to transmit to you, for the information of your Directors, a copy of the letter of appointment and terms of reference,† signed by Lord Milner, to the Commission to determine the amount due to the Company in respect of their administrative expenditure in Southern Rhodesia. The text of the Company's letters of the 21st November, 1918, and 7th July, 1919,‡ as well as the enclosures, are appended to the terms of reference.

2. The Commission have held a preliminary meeting, and have requested that your Directors may be asked to give every facility to Messrs. W. B. Peat and Company to examine the accounts of the Company, and I am to ask that arrangements may be made with a view to enabling Messrs. Peat and Company to take immediate steps accordingly.

I am, &c.,
HENRY LAMBERT.

40946

No. 7.

COLONIAL OFFICE to TREASURY.

SIR, Downing Street, 18th July, 1919.

WITH reference to the letter from this Department of the 10th July,§ I am directed by Viscount Milner to request you to inform the Lords Commissioners of the Treasury that the Commission for determining the amount due to the British South Africa Company for its administrative expenditure has now been appointed, and a copy of the terms of reference,‖ as signed, is enclosed.

2. It has been provisionally arranged that the Lord Advocate will appear before the Commission on Monday, the 28th instant, on behalf of the British South Africa Company, and it is understood that he will argue, *inter alia*, on the question of the payment of interest on the deficits incurred by the Company. In the circumstances, it is thought that their Lordships will wish that Counsel should be present to watch the proceedings on behalf of the Crown, and, if so, I am to suggest that instructions should be issued accordingly. Further details regarding the meeting will be communicated as soon as possible.

I am, &c.
HENRY LAMBERT.

42408

No. 8.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

(Received 21st July, 1919.)

Rhodesia House, 2, London Wall Buildings,

SIR, London, E.C.2, 21st July, 1919.

I AM directed to acknowledge the receipt of your letter of the 18th instant,¶ and to say that every facility will be given to Messrs. W. B. Peat & Company to examine the accounts of the British South Africa Company whenever it may be convenient for them to send their representatives for the purpose.

It would, perhaps, save time if Messrs. W. B. Peat & Company would place themselves in direct communication in the matter with Mr. Percy J. Baird, Chief Accountant to the British South Africa Company, at this address.

I am, &c.,
A. P. MILLAR,
Secretary.

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* No. 4 in [Cmd. 1129]. † No. 5. ‡ Nos. 1 and 2 in [Cmd. 1129]. § 36366; not printed: (related to composition and expenses of Commission). ‖ Enclosure in No. 5. ¶ No. 6.

40946

No. 9.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 7.0 p.m., 21st July, 1919.)

TELEGRAM.

21ST JULY. His Majesty's Government have decided to appoint Commission to examine claims submitted by British South Africa Company in respect of administrative expenditure on Southern Rhodesia. Commission will consist of Viscount Cave (Chairman), Lord Chalmers, and Sir W. B. Peat, and it is proposed that it should sit first in London, and, after hearing statement of Company, should proceed to Southern Rhodesia to consider any representations that may be made to it by interested parties there. His Majesty's Government and British South Africa Company have undertaken to accept decisions of Commission as final. Under terms of reference Commission are required to examine statements of British South Africa Company and to investigate records and accounts of Company in London and in Rhodesia, and to make all such inquiries as may seem desirable, and to take an account of what would be due to Company, in accordance with Report of Judicial Committee of Privy Council, if administration of Southern Rhodesia by Company had been determined on 31st March, 1918.

Statements referred to are enclosure in my despatch, 30th December, 1918, Confidential,* with further statement bringing it up to 31st March, 1918, copy of which follows by mail.†

Please inform elected members of Legislative Council, and take any further steps considered desirable to bring appointment of Commission to notice of public in Southern Rhodesia.—MILNER.

40946

No. 10.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Southern Rhodesia. No. 256.)

MY LORD, Downing Street, 22nd July, 1919.

WITH reference to my telegram of the 21st instant,‡ I have the honour to transmit to you copies of the accompanying correspondence§ regarding the appointment of a Commission to determine the amount due to the British South Africa Company in respect of its administrative expenditure on Southern Rhodesia.

I have, &c.,

MILNER.

40946

No. 11.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

SIR, Downing Street, 23rd July, 1919.

WITH reference to the letter from this Department of the 18th instant,‖ I am directed by Viscount Milner to transmit to you, for the information of your Directors, the accompanying copy of a telegram¶ which has been sent to the High Commissioner for South Africa regarding the appointment of a Commission to determine the amount due to the Company in respect of their administrative expenditure in South Rhodesia.

I am, &c.

HENRY LAMBERT.

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* 56248: not printed: (This enclosed copies of Nos. 1 and 3 in this volume and No. 1 in [Cmd. 1129]. † See No. 2 in [Cmd. 1129]. ‡ No. 9. § Nos. 2 and 3 in [Cmd. 1129], 36366, not printed (see note to No. 7); No. 4 in [Cmd. 1129], and enclosure in No. 5 in this volume. ‖ No. 6. ¶ No. 9.

40946

No. 12.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 7.0 p.m., 24th July, 1919.)

TELEGRAM.

24TH JULY. With reference to my telegram 21st July.* Commission expect to sail for Southern Rhodesia by "Balmoral Castle," leaving about 13th August, Party will consist of Lord Cave (who will be accompanied by his wife), Lord Chalmers, Mr. H. G. Howitt (partner of Sir W. Peat, who is unable to proceed to South Africa owing to other engagements), with Mr. H. N. Tait, secretary. Commission will proceed to Salisbury very soon after arrival at Cape Town, and can, if you think it advisable, visit Buluwayo on return journey, if this would facilitate taking of evidence. Time available will be short, as Commission desire to be back in England by middle October. Suggest that, pending arrival of Commission, elected members of Legislative Council and others desirous of giving evidence be invited to communicate with Assistant Secretary with view to arranging dates. Assistant Secretary should meet Commission at Cape Town.—MILNER.

49340

No. 13.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 1.10 p.m., 23rd August, 1919.)

TELEGRAM.

[*Answered by No.* 14.]

(Paraphrase.)

23RD AUGUST. Confidential. It seems desirable that specially competent man, not necessarily barrister, should be appointed to watch proceedings in South Africa of Southern Rhodesia Commission in interests of Crown. Telegraph your suggestions, please.—MILNER.

49641

No. 14.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 4.38 p.m., 26th August, 1919.)

TELEGRAM.

[*Answered by No.* 15.]

(Paraphrase.)

26TH AUGUST. Your Confidential telegram of 23rd August,† Southern Rhodesia Commission. As obviously most suitable man, I suggest Phear, K.C., unless he is already retained by elected members. I propose, failing him, W. S. Honey, of Messrs. Honey and Blanckenberg. Please telegraph if I can act accordingly.—BUXTON.

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* No. 9. † No. 13.

49641

No. 15.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 12.20 p.m., 30th August, 1919.)

TELEGRAM.

[*Answered by No.* 16.]

(Paraphrase.)

CONFIDENTIAL. With reference to your telegram 26th August.* In view of fact that he acted for elected members before Privy Council I should hesitate to accept Phear. Think it preferable not to pursue question of employing lawyer. Is there any reason why Crown should not be represented by Resident Commissioner? I presume that in any case he will attend sittings in order to be able to send usual political report. He would not be required to take active part in proceedings.—MILNER.

51551

No. 16.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 7.45 p.m., 4th September, 1919.)

TELEGRAM.

[*Answered by No.* 17.]

4TH SEPTEMBER. Confidential. Your telegram 30th August, Confidential,† Rhodesian Commission; Resident Commissioner is willing to undertake duty, and I propose to instruct him accordingly. I assumed from your telegram 23rd August‡ that you desired man with expert accounting or legal knowledge, or would have suggested Resident Commissioner.—HIGH COMMISSIONER

51551

No. 17.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 7.10 p.m., 8th September, 1919.)

TELEGRAM.

[*Answered by No.* 20.]

8TH SEPTEMBER. Your telegram 4th September, Confidential,§ Southern Rhodesia Commission. I approve of selection of Resident Commissioner. He should report immediately at the conclusion of proceedings.—MILNER.

55642

No. 18.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

[*Answered by No.* 21.]

SIR, Downing Street, 7th October, 1919.

WITH reference to the letter from this Department of the 10th July,‖ in which the Secretary of State agreed to the British South Africa Company's suggestion as to the valuation of the land which has been utilized by the Company for its own undertakings in Rhodesia, I am directed by Viscount Milner to request you to inform your Directors that it is proposed to have an independent valuation made on behalf of the Crown, with provision for an umpire whose decision, in case of disagreement between the valuers, shall be final.

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* No. 14. † No. 15. ‡ No. 13. § No. 16. ‖ No. 3 in [Cmd. 1129].

The Company will, it is gathered, rest themselves upon the various valuations made by Mr. Inskipp.

It is desired to ask the Commission to appoint as valuer, on behalf of the Crown, Mr. John Parke Richardson, of Essex Vale, and as umpire Mr. E. A. Hull, living near Bulawayo.

Lord Milner would be glad to have the assent of your Directors to these proposals.

I am, etc.,

HENRY LAMBERT.

57477

No. 19.

COLONIAL OFFICE to TREASURY SOLICITOR.

Sir, Downing Street, 29th October, 1919.

With reference to the letter from this Department of the 18th July, 1919,* informing the Lords Commissioners of the Treasury that the Southern Rhodesian Commission had been appointed, I am directed by Lord Milner to enclose an extract of a letter from Mr. Wilson Fox, one of the Directors of the British South Africa Company, enclosing a copy of one from Mr. H. N. Tait, the Secretary of the Commission, to Mr. Malcolm, another Director of the British South Africa Company :—

* * * * * *

"Lord Cave thinks it desirable that you should be informed of the points reserved for further argument in London, and accordingly, by his directions, I enclose a list of such points. The list is, of course, open to revision and may be added to by the parties concerned.

H. N. Tait.
Secretary."

Enclosure.

Southern Rhodesian Commission.

Points for further argument.

1. Should any deficits incurred by the Company before Matabeleland Orders in Council of 1894 be disallowed on the grounds that the Company's agency for the Crown was first created by that Order?

2. What proportions of the Head Office expenses should be attributed to administrative expenditure?

3. Should the whole or any part of the Rhodesian Defence expenditure be disallowed on the grounds:

(*a*) That the rebellion was caused or its cost increased by the withdrawal of the Company's police for the purposes of the Transvaal Raid, or

(*b*) That the expenditure was incurred as stated in the declarations of policy of 1913 for the acquisition, maintenance, and development of the lands and minerals of the territories?

4. As regards public works and buildings, what effect should be given to clause 33 of the Company's Charter, as modified by clause 3 of the Supplemental Charter?

5. What deductions should be made in respect of the grants by the Company of lands, timber, and water rights, either without consideration, or for a consideration other than cash; and in cases where the Company has acquired a share interest in an undertaking, for the benefits of which such a grant was made, is the Company accountable for such share interest, or any, and what part thereof; in particular, what are the obligations of the Company in respect of its interest in the Rhodesia Railways, Victoria Falls, and Transvaal Power Company, Limited, and the mining and other undertakings to which grants of land have been made otherwise than by way of sale?

6. Should interest be allowed on the administrative deficits from time to time occurring, and at what rate?

7. Whether the revenue under the Mining Ordinance should be credited wholly to administrative revenue, or in what manner it should be allocated?"

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* No. 7.

Lord Milner desires that the Attorney-General and other Counsel may be instructed to consider these several points, with a view to representing the Crown at such further meetings of the Commission as may be held on its return from South Africa.

You will find enclosed a memorandum* on the seven "reserved points" enumerated in the above-quoted letter. Copies of the relevant documents* from which passages have been quoted, or references cited, in the memorandum, are sent herewith.

It will be observed that further questions appear to be contemplated, but of what nature it is not known at the moment. Instructions were issued to Mr. Douglas Jones, the Resident Commissioner, an Imperial officer stationed in Southern Rhodesia, to attend all meetings of the Commission during its visit to Rhodesia, as representative of the Crown, and to send on a report immediately on the conclusion of the proceedings there.

This will be communicated as soon as received.

I am, &c.,
HENRY LAMBERT.

64988

No. 20.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 13th November, 1919.)

(Southern Rhodesia. No. 781.)

MY LORD, High Commissioner's Office, Cape Town, 21st October, 1919.

WITH reference to your Lordship's telegram of the 8th September,† approving of the appointment of the Resident Commissioner in Rhodesia to watch the proceedings of Lord Cave's Commission in South Africa in the interests of the Crown, I have the honour to transmit herewith a copy of Mr. Douglas-Jones's report.

2. Although his despatch bears the date of the 8th instant, it only reached me on the 18th. He held it back for a few days pending the receipt of several of the enclosures.‡ It could not in any circumstances have caught the last mail to England.

3. The prints of the Commission's proceedings§ in Rhodesia (Enclosure No. 30) are understood to be unrevised, and will probably be reprinted in London with certain textual emendations.

I have, &c.,
BUXTON,
High Commissioner.

Enclosure in No. 20.

(No. 312.)

MY LORD, Resident Commissioner's Office, Salisbury, 8th October, 1919.

WITH reference to Your Excellency's despatch No. 2051, of the 11th September, and in compliance with instructions contained in Your Excellency's telegram of the 9th September, I have the honour to submit the following report on the proceedings at meetings held in Southern Rhodesia of the Southern Rhodesia Commission before the Right Honourable Viscount Cave (Chairman) and the Right Honourable Lord Chalmers, G.C.B.

2. The Commissioners, accompanied by Captain H. G. Howitt, D.S.O., M.C., Advisory Accountant, Mr. H. N. Tait, Secretary, and Mr. J. R. Armstrong, Assistant Secretary, arrived in Salisbury on the 17th of September. During the course of that day the Attorney General and Sir Charles Coghlan met the Commissioners and arranged the method of procedure best suited for conducting the inquiry. The hearing before the Commissioners commenced on the following day. The first day's sitting in Salisbury was the third day of the formal meetings of the Commission, the meetings on the first and second days having been held in London. The Commission sat on five days in Salisbury, and two in Bulawayo. As Lord Chalmers had been summoned to England, Lord Cave sat alone at Bulawayo. The Attorney General of Southern Rhodesia, Mr. C. H. Tredgold, K.C., appeared on behalf of

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* Not printed. † No. 17. ‡ The Resident Commissioner's report only is printed here.
§ Printed in Minutes of Proceedings of Commission as Stationery Office Publication, May, 1921.

the British South Africa Company, and Sir Charles Coghlan on behalf of the Elected Members. In accordance with instructions received from Your Excellency, I had the honour to watch the proceedings on behalf of the Crown.

3. In his opening remarks the Chairman explained the objects of the inquiry, which, Lord Cave said, arose from the report of the Judicial Committee of the Privy Council in the Land Case. That Committee had reported that the British South Africa Company had the right to look to the Crown for reimbursement of any outstanding balance of aggregated advances made by the Company for necessary and proper expenditure upon the Administration of Southern Rhodesia. The Company, His Lordship continued, had put forward a statement showing Administrative deficits of nearly £8,000,000, and that it was the duty of his colleague and himself to examine that statement and to investigate the books of the British South Africa Company, both in London and in Southern Rhodesia, in order to check the amount which would be due to the Company in accordance with the report of the Judicial Committee, if the administration of the Company had been determined on the 31st March, 1918. His Lordship concluded his remarks by saying that it seemed desirable that residents in Southern Rhodesia, who have a knowledge of the facts and who may have an interest in the result, should have an opportunity of assisting in the inquiry. His Lordship emphasized the fact that by doing so the people would in no way prejudice their position in relation to the future government of the country. They would simply be performing a public duty in giving the Commission the benefit of their knowledge and opinions on matters which might be referred to it.

4. I do not apprehend that Your Excellency desires me to summarize in any detail the proceedings at the hearing in Southern Rhodesia. To do so would entail the writing of a long and cumbersome despatch containing to some extent a repetition of that which appears in print. I think therefore that I shall best be serving Your Excellency's convenience if, in this report, I confine myself to indicating the points of substance which were raised and discussed. Marginal notes in this despatch indicate the day of the proceedings on which the particular matter referred to was discussed, and the number of the page is that of the print of the proceedings made in London of the first two days and in Southern Rhodesia of the third to the ninth days. I enclose a summary of the proceedings as published in the local press.*

5. Mr. Tredgold, after clearing up a point arising out of the proceedings of the first day in regard to the system of accountancy in respect of the administrative item £3,735,942 before the Order-in-Council, 1898, came into operation, said that, in regard to the representations made by the Anti-Slavery and Aborigines Protection Society, he was prepared to deal with the questions of the Matabeleland War Expenditure, 1893 (£119,952), and Rhodesia Defence Expenditure (£2,587,418) in such a way as he hoped would enable a decision on the propriety of the expenditure and the correctness of the figures being arrived at. The history of the loot of cattle from the Matabele had formed the subject of a legal dispute, and a judgment delivered by the Supreme Court would show what became of those cattle. Mr. Tredgold then referred to the fact that the Company were claiming interest on what had been termed the "Advances," or in other words the administrative deficits.

6. Sir Charles Coghlan in his opening remarks said that he understood that the questions submitted to the Commission were matters between the British South Africa Company and the Crown, and that they had nothing to do with any other form of government which might be imposed upon the country. He also desired to make it perfectly plain that the fact of his appearing before the Commission on behalf of the Elected Members must not be regarded as an admission that any debt which the Commission might find to be due could be placed upon the shoulders of the people of the Territory. With regard to the claims of the Company, Sir Charles Coghlan said he had retained on behalf of the Elected Members the services of two local accountants, Mr. Pulbrook and Mr. Raymer, to examine the Company's documents and to make a report. It was arranged that Messrs. Pulbrook and Raymer should meet Captain Howitt, and that they should together go into the matter of the accounts. I enclose a copy of Messrs. Pulbrook and Raymer's report.

7. I now propose to take the points raised by Sir Charles Coghlan in the order in which he raised them, which order corresponds closely to the order of the items in the Company's claim, and finally to invite Your Excellency's attention to any other points of importance which were raised during the course of the inquiry.

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* *Rhodesia Herald*, 19th September, 1919, etc., not reprinted.

8. *Agency on behalf of the Crown by the British South Africa Company.*—On the question of agency, Sir Charles Coghlan maintained that there was no agency on behalf of the Crown by the Company prior to the promulgation of the Matabeleland Order-in-Council, 1894, which conferred administrative powers on the Company. He held that until the disappearance of Lobengula, it was not contemplated that the Crown should confer administrative powers upon the Company, and that the Charter itself clearly contemplated administration by the Company outside the Crown; this he contended was shown by Article 33 of the Charter in relation to public buildings, but section 33 of the Charter under the report of the Judicial Committee had become inoperative if the Company were to be refunded the administrative deficits in full, because the deficit must include the expenditure on buildings. Continuing, Sir Charles Coghlan said it was conceivable that the British South Africa Company might have continued its administration without being an agent of the Crown at all. The Charter contemplated that they were to obtain administrative rights by treaty or concession from people on the spot, and, after the disappearance of Lobengula, no one remained except the Crown from whom they could get them. Mr. Tredgold replied that the Order-in-Council of 1894 made no difference in regard to the matter of agency. An agency had existed from the date of the granting of the Charter. The effect of the Order-in-Council of 1894 was, he argued, merely to extend the system of administration, which the Company was authorized by the Charter to obtain when it occupied Mashonaland, to Matabeleland as well—in effect to the Territory now known as Southern Rhodesia. Mr. H. H. Phear, K.C., who had been instructed by Sir Charles Coghlan on behalf of the Elected Members, ably continued the argument. He argued that prior to 1894 the Company under the Charter was entitled to carry on a "commercial business of government," and that the Crown, before the conquest of Matabeleland and the disappearance of Lobengula, was not in the position of a landowner and could not therefore grant an agency to the Company to develop its property. The Crown had in fact no property over which to give a mandate. The object of Sir Charles Coghlan and Mr. Phear was to show that all expenditure prior to 1894, including the item of £119,952 for the Matabeleland War, 1893, should not be included in the British South Africa Company's claim. Mr. Tredgold was concerned to prove that the period since the occupation of Mashonaland in 1890 to the 31st March, 1918, must be taken as a whole.

9. *The Southern Rhodesia Administrative Account to* 31*st March*, 1918—£3,753,942 *less* £37,086 *being balance of five per cent. commission on mining revenue collected, not credited to Administrative Revenue.*—Sir Charles Coghlan apprehended that if his objection in regard to the period prior to 1894 was valid, this figure would be affected by the amount debited in respect of the years between 1889 and 1894. He did not regard five per cent. as sufficient remuneration to the Administration for collecting the Commercial Branch's Mining Revenue, and suggested further that the Company in its commercial capacity, had had some benefit from the administrative expenditure, and should therefore be charged with a part of the deficit. Sir Charles Coghlan said that his attention had been drawn to the fact that administrative officials were employed in the purchase of cattle for the Commercial Branch. This point was disposed of by the Attorney General reading a letter from Mr. R. C. Simmons, in which details are given of certain transactions which took place in 1914 in regard to assistance afforded to some settlers in the Marandellas District. Mr. Tredgold said that the Administration had received credit from the Commercial Branch for services rendered. I enclose a copy of a schedule which shows the amounts now credited, and merely invite attention to the point. Mr. R. W. Gilchrist referred to certain fencing material which had been supplied at administrative cost in connexion with an outbreak of African Coast fever, and which, he said, had been taken down and re-erected on the Company's private property. Mr. Gilchrist thought that the Crown would have benefited had this fencing material been sold by public auction. Evidence was given by Mr. A. C. Bagshawe, who was for many years an official of the Mines Department, in regard to the time occupied by officials in that department in collecting revenue paid to the Commercial Branch in return for which services administrative accounts are credited with five per cent. of the total amount. The Auditor General, Mr. R. H. Everett, when giving evidence, stated that he considered five per cent. a fair charge. With regard to the main item of the administrative account, Mr. Tredgold admitted that prior to 1908 there had been a very large amount of mining revenue which had been credited to the Commercial Branch, and that certain items of it, such as transfer fees on mining

claims, which were obviously administrative revenue, should be deducted from the Company's claim. The sum which should be deducted might, he said, approximate £250,000. This statement led to a discussion on the question of which items of mining revenue collected, under the mining laws, should be regarded as administrative revenue, and which should be credited to the Commercial Branch. Sir Charles Coghlan maintained that all revenue derived from statutory enactments relating to mining, except royalties, should be regarded as administrative revenue. He referred to the concessions made in 1907 by the Directors of the Company, as amended by the Statement of Policy in 1913. In 1907 the Directors stated that:—

> "Administrative Revenue shall include all Post and Telegraph receipts and all sums acquired under authority of Ordinances passed by the Company or the Legislative Council, except royalties, quit rents, lease rents, and site rents, and so long as they continue payable, inspection by payment fees and fees on certificates for extra work."

This was amended under the Statement of Policy in 1913 (page 2) by the following adjustments:—

> "(*a*) Inspection fees.
>
> "(*b*) Fees on certificates for extra work. Half the payments received on these accounts will be treated as administrative receipts.
>
> "(*c*) Site rents. These receipts will in future be divided into two equal portions, of which one will be paid to the landowner and the other be treated as administrative revenue."

I may here point out that transfer fees are not mentioned, and have been accordingly credited to the administrative account since 1908; prior to that date they were treated as commercial revenue, but an amount of £288,823 is to be deducted from the claim in respect of them. Sir Charles Coghlan said that the omission to deduct certain mining revenue had been described by Mr. Tredgold as an error. He maintained that there had been no error, but it was, rightly or wrongly, a deliberate policy, in which the people of the Territory had never acquiesced, and asked that the whole matter might be reconsidered, and that it should be definitely laid down which items of mining revenue are to be regarded as administrative and which commercial. He also held that if the arrangements made in 1907 and 1913 are accepted as equitable, they should apply to the period prior to 1907. I append a schedule (marked A) which shows the total mining revenue collected during stated periods; one (marked B) showing how it is proposed that this revenue should be divided between the two accounts, and one (marked C) showing the variations in respect of items, site rents and miscellaneous, which, although admitted by Mr. Tredgold should be credited to administrative revenue, the Company subsequently desired to credit to the Commercial Branch. Your Excellency will observe that on Lord Cave drawing attention to this alteration, Mr. Tredgold explained that the Directors' Statements of 1907 and 1913 were regarded as compromises (this, as I have stated, Sir Charles Coghlan contested), and that if these compromises were to be made retrospective in respect of the period prior to 31st March, 1908, which he contended would be contrary to the understanding embodied in the statements, then the Company should be at liberty to reopen *de novo* the whole question as to what mining revenue collected during the whole period covered by the claim should be regarded as administrative and what commercial, and instanced site rents and miscellaneous as items which the Company would then claim as commercial revenue. I am doubtful as to the wisdom of Sir Charles Coghlan's request that the whole matter should be reopened. The concessions made by the Directors in 1907 and 1913 may, I think, be regarded as equitable, and it is possible, if the whole matter is referred for revision to an impartial tribunal, that certain items, from which the Administration now derives benefit, may be ruled to appertain to the mineral rights. This is a point to which, however, the law officers of the Crown will doubtless give due consideration. In this connexion I enclose a copy of a memorandum by the Auditor-General, which I regard as an unbiassed exposition of the matter. In reply to a question by the Chairman, Mr. Tredgold said that the Company are prepared to stand by the declaration of Policy of 1907 as amended in 1913 if the terms are not made retrospective. I also enclose for convenience of reference a copy of the Mining Laws and Regulations to which reference was made during the discussion.

10. *Expenses incurred in Great Britain on Administrative Account from 29th October*, 1889, *to 31st March*, 1918—£458,321.—Sir Charles Coghlan said he failed to understand why it is claimed that this amount represented services to the

Crown. He doubted whether the expenses of the Company's London Office would have been much less had it not had administrative functions to perform. He understood that the amount did not include any charge in respect of Northern Rhodesia, and suggested that it was unfair to debit Southern Rhodesia with fifty per cent. of the London Office expenses. He drew attention to the action of the legislative Council in 1908 and 1914 when it was proposed to place on the estimates of administrative expenditure a contribution to the London Office expenses. This item was allowed by the Legislative Council in the year 1914 only. So far therefore as administrative expenditure as approved by the Legislative Council is concerned, £10,000 only of the total of £40,000 has been debited to administrative expenditure through the estimates. The balance of £30,000 has been debited by book entry in the accounts of the London Office, but, I understand, does not appear in the administrative books. An attempt to show it having been disallowed by the Auditor General, the history of the matter was related by Mr. Tredgold, and a memorandum by Mr. Malcolm was put in showing how the amount claimed in respect of services by the Head Office to the Administration was arrived at. A telegram from the Company was put in which purports to be a more definite statement of its London Office expenses. The matter was further discussed in connexion with a suggestion that prior to 1908 no part of the expenditure in Southern Rhodesia had been debited to the Commercial Branch, and a memorandum by Mr. Malcolm was put in showing the credits which should be made for services rendered to the Company by the Administration. I also enclose copies of a letter addressed by the Directors to the Administrator, and of a certificate attached to the letter.

11. *Matabeleland War Expenditure*, 1893—£119,952.—The representatives of the Anti-Slavery and Aborigines Protection Society represented that the cost of this war should be excluded from "necessary and proper" administration expenditure, because the Company committed themselves to an invasion of Matabeleland in opposition to the wishes of His Majesty's Government. Mr. Harris also referred to the cattle taken from the Matabele, and held that these cattle should be placed as a credit against the charges of the war. Sir Charles Coghlan said that this item fell within the period prior to 1894 in respect of which period, he argued, the Company were not entitled to claim a refund of deficits. Mr. Tredgold said the history of the incident would be found in Command paper C. 7555, and referred to the correspondence printed in Command paper C. 8547, and thought that about £30,000, the proceeds from the sale of the cattle, had been credited to administrative revenue, and cited the case of Combrinck *versus* the British South Africa Company, at page 45 of the Supreme Court Reports, volume 18, 1901. He maintained that this war had to come sooner or later, and that the operations were undertaken in furtherance of the duty placed upon the Company to maintain law and order within the Territory, because the Matabele were raiding the Mashona, as was, at that time, their annual custom. Sir Francis Newton referred to the investigations he made into the incident in1894 (C. 7555), and supported Mr. Tredgold's contention that the war was not caused by any unlawful act on the part of the Company's employees. I enclose a summary of the expenditure under this item.

12. *Rhodesia Defence Expenditure*—£2,587,418.—This expenditure was incurred in the suppression of the Matabele rebellion and operations connected therewith which broke out on the 20th March, 1896, and the Mashona rebellion which began in June of the same year. The representatives of the Anti-Slavery and Aborigines Protection Society held that the item should be disallowed, because the rebellions were due to the ill-treatment of the natives, and to the withdrawal of the police from the Territory to take part in the Jameson Raid, and invited attention to the report of Sir Richard Martin, K.C.M.G. (C. 8547). Sir Charles Coghlan held that as the cause of the rebellion was the withdrawal of the police to take part in the Raid, it was due to misconduct on the part of the Company's officials, and the Company should therefore bear the expense. He thought that the cost of the equipment, arms and munitions which the police took with them, their pay, and the pay of those taken prisoners, were included in the administrative account. He also thought that compensation paid to settlers for losses incurred on account of the rebellion had been paid from administrative funds. Mr. Tredgold stated that a sum of £150,000 in respect of compensation was included in the item. In this connexion I would invite attention to the evidence given by Mr. P. D. Crewe (question 17 at page 95 of Command paper C. 8547) before a Committee appointed in 1897 to collect testimony to be submitted to the Imperial Parliamentary Committee regarding the Administration of Rhodesia by the British South Africa Company.

It will be observed that Mr. Crewe stated that about two-thirds of the amount of all claims sent in had been paid, amounting to £377,000. This would indicate that a large amount of the compensation paid has not been debited to administrative expenditure. Sir Charles Coghlan maintained that in any case it would be "monstrous in the extreme" if this debt was passed on by the Imperial Government to the people of the Territory. Mr. Tredgold argued that the Company in its corporate capacity had no complicity in the Raid, and in so far as that incident might be regarded as having "afforded the opportunity for the rising," the Company could not be held responsible for it. Its Directors in London at the time knew nothing of the preparations which were being made to enter the Transvaal, and the matter was known only to Mr. Rhodes, Mr. Beit, Mr. Maguire and Earl Grey, who at the time was the Company's Administrator at Salisbury, and Mr. Rhodes had abstained from informing the Board of Directors of the support he was giving to the Johannesburg movement. He held that the result of negotiations subsequent to the inquiry led up to the granting of the Order-in-Council, 1898, which absolutely dispelled any idea of complicity or mal-administration on the part of the Company. He maintained that although the withdrawal of the police may have afforded the opportunity, the causes of the rebellion were:—(1) the fact that the Matabele had never been really subdued; (2) the labour regulations; (3) the cattle regulations, and (4) rinderpest and the slaughter of cattle. Sir Francis Newton considered that in so far as the removal of the police from the Territory was a cause of the Raid, the Imperial Government could not be regarded as being absolved from all complicity, as they were aware of the fact that the police were being concentrated at a place in the Bechuanaland Protectorate. I enclose an analysis of the expenditure connected with this item, as compiled from the books of the Company at Salisbury and Bulawayo.

13. *Public Works and Buildings*, £1,630,870.—Mr. Tredgold explained that this item was framed on the claim for reimbursement of the deficits which had occurred in respect of the administration of Southern Rhodesia. He held that the Report of the Judicial Committee of the Privy Council in the Land Case had the effect of altering the position as laid down by Article 33 of the Charter, in that under the Charter a new Government could take over the Public Works at a valuation, but the report entitles the Company to claim reimbursement for out of pocket expenses for administrative purposes. In this Sir Charles Coghlan concurred. The position in this respect is summed up in a memorandum which was put in by Mr. Malcolm as follows:—

> "Even if we still had to accept valuation from a new Government the whole depreciation would be properly chargeable to administrative expenditure, so that the final result would be the same."

I enclose a Schedule of the expenditure on construction of Buildings and Public Works, Roads, Telegraphs and Telephones, including cost of land, surveys, fencing, administrative charges from 1890 to 31st March, 1918, totalling £1,447,130. It will be observed that the total cost of Buildings and Public Works amounts to £963,419, but the value of these works existing prior to 29th October, 1914, amounts to £579,444 (Statement No. 1). To this sum must be added the cost of buildings, etc., erected between 29th October, 1914, and 31st March, 1918, amounting to £37,584 (Statement No. 2), making a total of £617,028 less an amount of £76,003 in respect of buildings on Statement No. 1 taken over by the Commercial Branch, demolished, or otherwise disposed of. The Commissioners asked me to go through a list of Public Works which was to be handed to me by the Administration, and to inform them which buildings were, in my opinion, suited for administrative purposes. I stated, after examining the lists, of which Statements Nos. 1 and 2 are the summaries, that all the buildings shown therein were at present used for administrative purposes. In addition to the total of £1,447,130 for Public Works there is an item of £183,000 (subsequently found to be approximately £185,000) which goes to make up the total of £1,630,000, and to which reference is made in the Company's letter to the Colonial Office of the 7th July, 1919. It represents the cost of certain buildings and houses occupied by administrative officials which it is proposed to transfer to the Administration. I enclose a Schedule (No. 1) of these houses, showing their cost at 31st March, 1919, and a Schedule (No. 3) showing certain houses which it was proposed to retain for the use of the Commercial Branch. This proposal did not appear to meet with the approval of the Commissioners, and I presume all these houses will be transferred to the Administration. In addition to

the houses shown on these Schedules, Government House and its grounds at Bulawayo has been added at a cost of £29,000. Sir Charles Coghlan during the inquiry expressed himself as being opposed to the transfer of these houses to the Administration. I gathered, however, in a subsequent conversation which I had with him, that he thought it would not be bad business for a future administration if these houses were to-day taken over as administrative property, more especially in view of the possibility of the report of the Judicial Committee over-riding Article 33 of the Charter, the effect of which would be that the Commercial Branch might take over the houses at a valuation, and that any difference between that valuation and the original cost, less an amount in respect of rent which the Commercial Branch has hitherto derived from them, would be added to the administrative deficits. If that is now Sir Charles Coghlan's view, and I believe it is, I entirely concur in it. I regard it as good business for the Administration to acquire all these houses. It would not, I think, be possible to build any of them, having regard to the probable high cost of building, for some time to come, at the figure at which they are shown in the Schedule. It is also very desirable that an administration should own houses which it can let to certain of its officials. Mr. Malcolm stated that if any revenue derived from the telegraph lines, which are included in the statement of Public Works, had been credited to the Commercial Branch, the matter would be adjusted.

14. *Moveable Assets*—£239,825, *and Debtor Balances*—£112,921.—I enclose summaries of the Schedules put in in regard to these items. They call for no particular comment.

15. *Land.*—Under this heading a number of points were raised and discussed at some length. They included the land taken by the Company for its private estates; land alienated to companies and individuals for considerations other than cash; land concessions to the railway and other companies, including the Victoria Falls Concession; and land alienated as farms under what is termed "A Gold Belt Title." The item £1,155,060 less £155,014 expenses in connexion with land settlement, is a deduction from the main claim in respect of receipts from land. A memorandum by Mr. Malcolm was put in explaining why the whole cost of the Land Settlement Department and half the cost (Statement enclosed) of the Commercial Representatives Office in Bulawayo was charged against Land Revenue. Evidence on this latter point was given by Mr. T. J. Rooney, auditor of the Commercial Branch. The land taken by the Company for its private estates is the subject of an independent valuation, and the aggregate value will be included in the final award. Sir Charles Coghlan raised the question of land alienated for considerations other than cash, including land concessions to the railway companies, Willoughby's Consolidated and the Victoria Falls Concession. I enclose a copy of a schedule of land alienated to "subsidiary companies," which was supplied to the Resident Commissioner by the Administrator in April, 1899, and which I handed to the Commissioners. The Commissioners asked for as full a statement as possible of alienations of land falling within this category, and suggested that the return which I handed in might be taken as a starting point. A copy of a schedule, with a memorandum by Mr. Malcolm, which has been prepared locally, is enclosed, but I gather that it will be subject to amendment in London. References were made to Pioneer grants and the Victoria Agreement title, but they are not points of material importance. The question of the servitude placed on land in the neighbourhood of mines, under the Gold Belt Title, was raised by Mr. Leggate. The history of this is briefly as follows:—Miners were granted the free use of wood and water on unalienated land in the neighbourhood of their mining operations. Then farmers came who desired land in the neighbourhood of mines, as they represented potential markets for farm produce. Farms were surveyed on what is termed the Gold Belt, and a form of title was granted to the farmers in which the rights to wood and water were reserved to the mines. The effect was simply to carry on certain rights given to the miner on unalienated land to that land when alienated for farming purposes. The point for consideration is whether the Company received any benefit from "an alienation of the superficies rights by reason of the servitude." With regard to the larger question, it remains to be decided what benefit, if any, the Company received from alienations for considerations other than cash, and if so, whether any deduction should be made from the main claim, in addition to the sum of £1,000,046 in respect of such alienations. It appears that information in regard to this matter can best be supplied in London, and the question is being reserved for further consideration there. Besides the alienation of land for considerations such as shares

in subsidiary companies, there are transactions of a nature similar to the agreement with Willoughby's Consolidated, a copy of which is enclosed. Under the agreement, this Company undertook to expend a certain sum of money in development on the condition that a grant of 600,000 acres was made to it. There are also the grants of land to the railway companies (copy of agreement enclosed) which are dealt with in memoranda put in by Mr. C. B. St. Gwynn, and the Victoria Falls Concession (copies of two agreements enclosed) under which the Company appears to have received considerable benefit in return for a grant of the water power at the Victoria Falls. In this connexion the following passage, which appears in the speech delivered by Mr. P. Littelton Gell at the twenty-third Ordinary General Meeting of the Company, which was held in London on the 24th July last, is of some significance :—

> "On our mineral interests there is nothing special to report. Developments have been arrested by the War. The income from royalties amounted to £105,600 in addition to dividends received on shares. Our net revenue from the Victoria Falls Company amounted to £27,498. The net receipts from the railways were £978,700."

16. *Interest.*—The matter of interest was raised at the first sitting of the Commission in London on the 29th July. The Lord Advocate, the Right Honourable J. A. Clyde, K.C., who appeared on behalf of the British South Africa Company, held that for the due reimbursement of the Company, interest must be added. The reason that an amount for interest is not included in the British South Africa Company's claim is stated in the third paragraph of the letter dated 21st November, 1918, addressed by the Company to the Colonial Office, and is as follows :—

> "3. Until the amount of the capital expenditure has been agreed, the interest upon it cannot be calculated, but it is of course understood that such interest will be calculated and added so soon as the capital expenditure properly chargeable has been agreed."

The Attorney General of England, the Right Honourable Sir Gordon Hewart, K.C., said that he was startled by the propositions put forward by the Lord Advocate that interest would fall to be added and that it should be reckoned at the rate the Company had had to pay in order to obtain money to finance the administration. These, amongst others, were questions which, Sir Gordon Hewart said, he wished to go into carefully and to deal with on a later occasion. In Rhodesia the matter of interest was argued before the Commissioners. Mr. Phear dealt with the question of the liability for interest as governed by Roman Dutch Law, and suggested that as far as the present case was concerned, there was little difference between the English and Roman Dutch Law. In this connexion, in reply to a question put by the Chairman, Mr. Tredgold said he found it difficult to say which law would govern the question. The contract was made in England, and the place of fulfilment was Rhodesia. Sir Charles Coghlan held that under the report of the Judicial Committee there is no debt which falls to be paid. The effect of the report was to create a charge upon a particular estate only so far as that estate is able to discharge it. The Company also, he maintained, could have sold the land year by year to meet any deficit instead of allowing the deficits to accumulate in order to get a better price for the land at some future date. The Company in the past had also had the benefit of a free administration which they elected to retain in order to escape a contribution to the cost of the maintenance and development of the country. A debt, even if there were a debt, he continued, does not bear interest until it is overdue, and in the present case the debt will not be overdue until the Company surrender the Administration. Mr. Phear elaborated the argument. He held that the effect of the Judicial Committee's report was that the Company were to be reimbursed, as distinct from being paid, out of the proceeds of the land when it is realized. Mr. Phear held that interest is only due under Roman Dutch Law when a debt is *in mora*. In this case there had been no *mora*. Mr. Tredgold held that the idea of interest was present to the minds of the Judicial Committee when the question of due reimbursement was being dealt with, and that in the present case it was not necessary for delay to have occurred before interest became due. He argued that the Company was in the position of an agent who had advanced monies on behalf of a principal, and who was entitled to reimbursement for all outlay advisably and necessarily incurred with interest even though the principal has made no delay in repaying it, because the agent may have had to borrow money or use his own funds, which were bringing him a return, to execute the mandate. An agent, he continued, was entitled to two things, viz. :—remuneration and reimbursement. The Company, he

said, was not claiming remuneration because they had enjoyed the benefit of administration, but claimed reimbursement with interest. With regard to the time from which interest should commence, Mr. Tredgold suggested that the amount of the deficit for a year in which it had occurred should be ascertained and that interest should be charged from the middle of that year. To sum up :—The representatives of the Elected Members held that there was no agreement express or implied in regard to the repayment of advances or disbursements between the principal and the agent; that no demand for repayment of a debt had been made, and in fact no debt existed upon which interest was due to be paid. The liability is merely a charge against a particular estate, and that even if the liability is held to be a debt, the debt is not *in mora*. The Company, on the other hand, claim to have acted in the capacity of an agent who has advanced money, and borrowed it in order to do so, on behalf of a principal; that they are entitled to reimbursement and that in such a case it is not necessary for *mora* to have occurred before interest falls to be added.

17. As briefly as possible, I have endeavoured to inform Your Excellency of the main points which were raised in the course of the inquiry in Rhodesia. To the point that the Company in its commercial capacity should bear some portion of the deficits I merely invite attention.

18. I enclose a copy of a letter from the Secretary to the Commission, covering a list of certain points which have been reserved for further argument in London; a list of items of accountancy which the Commissioners are considering; and a schedule of documents handed to the Commissioners which have not been previously referred to in this despatch.

19. I enclose prints, which have been made in Rhodesia, of the proceedings before the Commission on the third to the ninth days inclusive of its formal sittings.

20. In conclusion, I may say that a very interesting inquiry was conducted in a most friendly manner, and the frankness with which the Company met all demands for information was commented upon by the Chairman in his concluding remarks.

I have, &c.,

C. Douglas-Jones,
Resident Commissioner

65876

No. 21.

The BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

(Received 18th November, 1919.)

[*Answered by No.* 22.]

Rhodesia House, 2, London Wall Buildings,
London, E.C.2, 15th November, 1919.

Sir,

I beg to acknowledge the receipt of your letter of the 7th October last,* and to express regret at the delay which has elapsed in replying to it. The matter has involved reference to Rhodesia, as a result of which, while my Directors have, of course, no observations to offer on the appointment of Mr. John Parke Richardson, of Essexvale, as the valuer on behalf of the Crown, they would deprecate the appointment of Mr. E. A. Hull as umpire. Mr. Hull, although a man of respectability and standing, has at different times in the past expressed himself with regard to the Company in a manner which would make it difficult for my Directors to rely absolutely upon his impartiality in a matter of this kind.

There might be some advantage in appointing an umpire totally unconnected with Rhodesia—for instance, some person of standing in the Union of South Africa. The task before him would not be that of valuer in the sense of estimating to-day's value of certain areas of land; it would be more in the nature of historical investigation, the object being to ascertain what would have been a fair value for such land at varying dates in the past. The task, therefore, does not appear to be one for which an up-to-date local knowledge of land values in Rhodesia is indispensable.

The original procedure in the "Lands Clauses Arbitration Act" is that the valuers appointed by the two sides themselves agree upon an umpire, and my

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* No. 18.

Directors would suggest for the consideration of the Secretary of State, that Mr. F. Inskipp and Mr. J. P. Richardson might be asked whether they could jointly suggest the name of a gentleman, preferably—but not necessarily—from the Union of South Africa, to act as umpire. That gentleman, if no objection was found to him either by the Secretary of State or by my Directors, might then be appointed by the Secretary of State to act as umpire.

I am, &c.,
A. P. MILLAR,
Secretary.

69588

No. 22.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

[*Answered by Nos.* 23 *and* 29.]

SIR, Downing Street, 10th December, 1919.

I AM directed by Viscount Milner to acknowledge the receipt of your letter of the 15th November,* regarding the valuation of the lands which the Company is utilizing for commercial purposes, and to state that the Secretary of State accepts the proposal made by your Directors that Mr. F. Inskipp and Mr. J. P. Richardson should be asked to suggest jointly the name of a gentleman, preferably, but not necessarily, from the Union of South Africa, to act as umpire. It has been ascertained that Mr. Richardson is prepared to do this and to undertake the work of valuation on behalf of the Crown.

2. Mr. Richardson estimates that the work of valuation will probably take about two months, and it is desirable therefore that he should be able to start as soon as possible. The Secretary of State would be glad to receive your Directors' observations as to the instructions which should be issued to the valuers; and I am to point out in this connexion that there is some discrepancy between the statements as to the Company's estates enclosed in your letter of the 3rd December last,† and that contained in the return laid upon the table of the Legislative Council in reply to the resolution moved by Sir C. Coghlan last May.

3. It will be necessary to give Mr. Richardson a fee of £5 a day and also his actual railway fares while engaged on the work of valuation. The Secretary of State presumes that the total cost involved in obtaining a valuation of these lands may be regarded as part of the expenses of Lord Cave's Commission, of which the Company have agreed to bear half.

4. On receipt of a reply to this letter the Secretary of State would propose that Counsel for the Crown should be instructed to mention the matter to the Commission as being an agreed arrangement between the Crown and the Company.

I am, &c.,
HENRY LAMBERT.

71429

No. 23.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

(Received 16th December, 1919.)

Rhodesia House, 2, London Wall Buildings,
London, E.C.2, 16th December, 1919.

SIR,

I HAVE to acknowledge the receipt of your letter of the 10th December,‡ regarding the valuation of the lands which this Company is utilizing for its commercial purposes. My Directors note that the Secretary of State has accepted the proposal that Mr. Frank Inskipp and Mr. J. P. Richardson should be asked to suggest jointly the name of a gentleman, preferably, but not necessarily, from the Union of South Africa to act as umpire. Instructions to this effect are being telegraphed to Mr. Inskipp.

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* No. 21. † No. 1. ‡ No. 22.

In regard to the point raised in the second paragraph of your letter concerning the instructions to be issued to the valuers, my Directors would suggest that the valuers should be asked to ascertain the value of the Crown lands:—

(1) Reserved by the Company for its commercial undertakings as at the date when the reservations were made.

(2) Granted by the Company to third parties in exchange for lands held by them, for the purpose of enabling the latter to be used by the Company for its commercial undertakings, as at the date when the exchanges were arranged.

The statement* of the lands in question which was handed to Lord Cave's Commission by Mr. Tredgold, in Rhodesia, a copy of which is enclosed, gives the latest and the authoritative description of the lands in question, together with Mr. F. Inskipp's valuation of them on the above basis.

My Directors agree that the total cost involved in ascertaining the valuation of these lands should be regarded as part of the expenses of Lord Cave's Commission, of which they have already undertaken to bear half. It may be necessary to grant Mr. Frank Inskipp a special travelling allowance not exceeding £1 per day while engaged upon this work. which amount it is also proposed to charge to the Lord Cave Commission account.

My Directors agree to a statement such as that proposed in the fourth paragraph of your letter being made before the Commission by the counsel for the Crown.

I am, &c.,
A. P. MILLAR,
Secretary.

1765

No. 24.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 9th January, 1920.)

(Southern Rhodesia.)
(Confidential.)

MY LORD, High Commissioner's Office, Cape Town, 15th December, 1919.

WITH reference to my confidential telegram of the 6th December,† relative to the valuation of the land which is being utilized by the British South Africa Company for the purposes of its commercial undertakings, I have the honour to transmit, for your Lordship's information, copies of correspondence which has passed between the Resident Commissioner at Salisbury and Mr. J. P. Richardson regarding the appointment of that gentleman as valuer on behalf of the Crown.

I have, &c.,
BUXTON,
High Commissioner.

Enclosure 1 in No. 24.

SIR, Resident Commissioner's Office, Salisbury, 25th November, 1919.

YOU will be aware that one effect of the finding of the Judicial Committee of the Privy Council in the Land Case is that there is no difference between the legal position of the private estates of the British South Africa Company and that of the remainder of the unalienated land.

It is, however, not intended that these estates should be interfered with, and the value of them will be deducted from the total sum claimed by the British South Africa Company in respect of the administrative deficits. It is therefore necessary that a valuation of the company's private estates should be made.

I am directed by His Excellency, the High Commissioner, to inquire whether you would be prepared to accept the appointment of valuer on behalf of the Crown. I gather that Mr. F. W. Inskipp, Director of Land Settlement, may be appointed to act with you as valuer for the British South Africa Company.

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* Printed as Appendix I. † 69588: not printed (communicated substance of enclosure 2).

I understand that your fee for work of this nature is five pounds (£5) per diem, that you find your own transport but are allowed free railway travelling for yourself. I shall be glad to learn whether you are prepared to accept the appointment on these terms, and whether you would be prepared to co-operate with Mr. Inskipp.

It may be necessary to appoint an umpire, and it has been suggested that Mr. Inskipp and you should suggest jointly the name of a gentleman, unconnected with Rhodesia, preferably, but not necessarily, from the Union of South Africa, to act in this capacity.

Would it be possible for you, when replying to this letter, to give me an estimate of the number of days the valuation of the Company's estates would be likely to take you.

I have, &c.,
G. Douglas-Jones,
Resident Commissioner.

J. P. Richardson, Esq.,
Essexvale, Matabeleland.

Enclosure 2 in No. 24.

Your Honour, Essexvale, 1st December, 1919.

I beg to acknowledge with thanks the receipt of your letter of the 25th November.

I have much pleasure in accepting the appointment His Excellency the High Commissioner has been good enough to tender me as valuer on behalf of the Crown of the lands and estates made mention of by you. Needless to say, I shall be very willing to co-operate fully with Mr. Inskipp, and shall use my best endeavours to carry out the work in a thoroughly satisfactory manner.

With the rains impending it is more difficult than it otherwise would be to fix any definite period for the inspection, and with your permission I should like to consult with Mr. Inskipp regarding this point. Going by the extent of the areas and their wide distribution as I know them, I should say generally that the work would occupy quite two months, although if we are fortunate in the matter of weather less time may be taken up.

I note that it may be necessary to appoint an umpire, and in such case, with certain restrictions, Mr. Inskipp and myself may be called upon to suggest some one in this capacity.

I am leaving for North-West Rhodesia to-night and expect to be away for a matter of ten days.

I have, &c.,
J. P. Richardson.

To His Honour
The Resident Commissioner,
Salisbury.

5248

No. 25.

TREASURY SOLICITOR to COLONIAL OFFICE.

(Received 30th January, 1920.)

[*Answered by No.* 26.]

Treasury Solicitor's Department,
Storey's Gate, S.W.1, 27th January, 1920.

Sir,

I have, by desire of the Attorney-General, to call attention to the position in which the advisers of the Crown find themselves placed in connexion with the proceedings before the Commission which has been appointed to deal with the claim of the British South Africa Company to reimbursement of the expenses which it has incurred in the administration of Southern Rhodesia.

It will, of course, be understood that it is not the purpose of the following observations to call in question any matter of policy or any course which may have been advisedly adopted by His Majesty's Government.

But it is, nevertheless, necessary, in order to avoid any possible misconception, to point out that in the result neither the Attorney-General nor the Treasury Solicitor is able to accept responsibility for subjecting the claims of the Company to that degree of criticism or scrutiny to which, in view of their magnitude and importance, they should, from a legal point of view, have been exposed.

It may well be that it was not appreciated that claims of this description could not be treated as mere matters of account depending on the examination of the Company's books, or, on the other hand, if the intention was to appoint a Committee to conduct an informal inquiry, it may not have been realized that it would be impossible adequately to deal in this way with questions of fact and of evidence, many of them of the most contentious kind. Whatever the original intention may have been it almost necessarily followed, however, from the decision that the Crown and the Company should respectively be represented by Counsel, and from the engagement mutually entered into between the Colonial Office and the Company to hold themselves bound by the finding of the Commission, that the inquiry must assume the character of arbitration proceedings to which indeed the Arbitration Act became applicable. In these circumstances it would have been proper, in the opinion of the Attorney-General and of the other advisers of the Crown, that the proceedings should have conformed generally to the procedure ordinarily adopted by a tribunal whether acting as a Court of Arbitration or of law. In particular it was considered essential, in order that the interests of the public might be adequately protected, that ample opportunity should be given to its legal representatives to prepare and argue the case for the Crown, and to require that the Company should establish its case by evidence which could be challenged where necessary by means of counter-evidence or cross-examination as the case might be.

It will be within Lord Milner's recollection that after the result of the inquiry before the Judicial Committee of the Privy Council had been reported to the Colonial Office in July, 1918, no instructions were received by this Department until the letter of the 18th July, 1919,* from that Department to the Treasury.

In that letter the Lords Commissioners of the Treasury were informed that a Commission for determining the amount due in certain events to the British South Africa Company, under the report of the Judicial Committee, had been appointed, and a copy of the terms of reference was enclosed. It was further announced that it had been provisionally arranged that the Lord Advocate would appear before the Commission on the 28th of the same month, and would, it was understood, argue *inter alia* the question of interest on the deficits incurred by the Company. It was also intimated that it was thought that their Lordships of the Treasury would wish that Counsel should be present to watch the proceedings on behalf of the Crown, in which case it was suggested that instructions should be issued accordingly.

This letter was communicated to me by minute on the 22nd July, in order that I might take action accordingly, i.e., in six days' time. The Attorney-General and Counsel for the Crown were immediately instructed.

The terms of reference to the Commission referred to provisional statements (copies of which were attached) of the net expenditure of the British South Africa Company in connexion with Southern Rhodesia on account of the Crown up to the 31st March, 1918.

The original instructions to the Treasury Solicitor were to instruct Counsel to "watch the proceedings." I may observe that in ordinary circumstances Counsel present to watch proceedings take no active part, and that while possibly permitted to intervene on some special point, their function is merely to take note of what occurs for the purpose of giving any necessary advice to their client. In the present proceedings it was obviously not the intention that this course, which would have served no useful purpose and would have involved a very heavy waste of time and money, should literally be pursued. The only object of instructing Counsel was that they should see that the claim of the Company was properly presented and answered where answer might be possible; and also that they should call evidence and generally conduct the case for the Crown in opposition so far as might be necessary and proper to that presented by Counsel for the Company.

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* No. 7.

When the proceedings commenced all that the advisers of the Crown had laid before them was the claim furnished by the Company to the Colonial Office. This merely consisted of a summary of the heads of expenditure claimed to be administrative amounting in the aggregate to £7,866,177, as forwarded by the Company to the Colonial Office with their letter of the 7th July, 1919.* This statement brought the claim to the 31st March, 1918, the amount to the 31st March, 1917, previously claimed on the 21st November, 1917, having been £7,569,435.

It was obvious that in order to conduct the case for the Crown in respect of such a claim as this the most ample instructions and materials and sufficient time for preparation were necessary. I, however, found myself in the position of being called upon to instruct the Attorney-General and Counsel to appear before the Commission at a few days' notice, practically without any materials whatever. It was, nevertheless, decided in consultation with the Attorney-General to attend before the Commission in order to ascertain the view which the Commission took of the nature of the inquiry and the procedure which it was proposed to adopt.

At the meeting in question, the Company took up the position that they had presented their claim, and in effect that it must be assumed to be valid except in so far as the Crown might establish objections to it.

The Attorney-General repudiated this view of the matter. He insisted that the claim should be made in sufficient detail and be established by evidence in the ordinary way, and further that full opportunity for calling evidence, for obtaining the necessary materials and for making the requisite preparations, should be allowed. He pointed out that unless those acting on behalf of the Crown were enabled clearly to understand what was said on the part of the Company—how their claim was put, and what it involved, it was impossible for the advisers of the Crown to know what they had to meet. All that the Attorney-General had before him was a sheet of figures.

While the Commission gave no final decision upon these matters it became evident that they had not so far taken the same view of the proper procedure as that entertained by the Attorney-General. They seemed disposed to consider that the matters in issue might be dealt with mainly on the accounts which to a considerable extent they would themselves investigate with the assistance of their expert colleague, leaving to Counsel merely the duty of arguing at short notice any questions which might seem to arise in this way. The Commission intimated that opportunities for cross-examination would be afforded if desired, but they clearly preferred that the proceedings should, as far as possible, partake of the nature of an inquiry by a Parliamentary or Departmental Committee rather than of an arbitration in which both sides would present, prove, and argue their own cases. In such case, however, it would have rested with the Committee themselves to call evidence and to examine and cross-examine witnesses.

It would not serve any useful purpose to describe at length the discussion which took place at this meeting. But I appended a copy of the shorthand notes to my memorandum, to the Treasury, of the 9th August, 1919, and I would refer to these notes as showing the attitude adopted by the Company, by the Attorney-General, and by the Commission upon the matter.

In the result, the Commission having intimated that they were about to proceed to South Africa to conduct a part of their inquiry in Rhodesia, the proceedings were adjourned *sine die*.

In view of the position which had developed, the Attorney-General himself wrote at length to the Secretary of State calling attention to the difficulty in which the advisers of the Crown were placed. I also made similar representations through the Lords Commissioners of the Treasury, and inquired what course it was proposed to take for the protection of the interests of the Crown at the proceedings in South Africa. After communication between the Treasury and the Colonial Office, I was informed in reply that it was not considered necessary that Counsel should be instructed to appear in South Africa, that until the return of the Commission there was nothing requiring to be done, and that if it should become necessary to instruct Counsel the Colonial Office would communicate all necessary information to the Treasury Solicitor.

The Commission sailed for South Africa, where two of its members held some eight public sittings, the third member, Sir William Peat, remaining in this country.

At these meetings Mr. Tredgold, the Attorney-General for Southern Rhodesia, appeared to urge the Company's claim. No Counsel was briefed on behalf of the

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* No. 2 in [Cmd. 1129.].

Crown, but the Resident Commissioner was instructed by the Colonial Office to watch the proceedings and report, and Sir Charles Coghlan appeared on behalf of the Elected Members or such of them as he had been able to get into touch with since it was known that they were to take part in the Inquiry (see shorthand notes, third day, p. 2). On the same day (p. 6) he said he had been instructed only on the previous day and wished to make it perfectly plain that the Elected Members had no concern whatever with the Inquiry.

The Inquiry in South Africa thus took place in the absence of any representation of the party who would in the ordinary course have to find the money, and was in effect an argument of a compensation case in the absence of the promoters. Practically no evidence was called and the matter rested upon statements made by advocates in argument: and examination was, it is understood, also made of the Company's books locally by the Commission, and certain figures and information were supplied to the Commission by the Company. There was consequently no cross-examination, and it is obvious that in the circumstances the Crown was not in a position effectively to contest the statements made on behalf of the Company. The advisers of the Crown are not in possession of the results of the examination of the Company's books or of the figures or information supplied to the Commission, which it has not been possible to check.

Meanwhile, semi-official correspondence had been proceeding between Mr. Greenwood, of the Law Courts Branch of my Department, and Sir Henry Lambert as to certain points which the Colonial Office thought would ultimately have to be argued. (See the letter of 21st August* from Sir Henry Lambert to Mr. Greenwood.)

On the 27th August, Mr. Greenwood wrote to Sir Henry Lambert a letter† containing the following paragraph:—

> "If it is considered that the Treasury Solicitor should brief Counsel to attend the further meetings of the Commission in England after it has returned from South Africa no doubt the Colonial Office will make the necessary communication to Sir John Mellor. In that event it will be essential to have, some time before the Commission sits, a précis of the facts relating to each item of the claim and a copy of all the relevant documents together with an indication of the policy which should be pursued in criticizing the claim."

On the 29th October, 1919, Sir Henry Lambert forwarded a list‡ of seven points which Lord Cave thought it desirable should be reserved for further argument in London, with a short note of the points involved, and a request that the Attorney-General and other Counsel might be instructed to consider the seven points with a view to representing the Crown at such meetings of the Commission as might be held on its return from South Africa.

It was at once apparent that to argue these points adequately would involve a very great deal of preliminary work for which the Treasury Solicitor had not the materials. Counsel for the Crown were immediately consulted, and the Attorney-General advised in consultation, on the 13th November, 1919, that a considered opinion should be written showing the impossibility of arguing these points or dealing with the claim in the absence of adequate instructions.

Before this opinion was in fact written, the Colonial Office forwarded to me a copy of a despatch§ from Lord Buxton containing a report by the Resident Commissioner of the proceedings of the Commission in South Africa to which certain schedules were attached, and also a copy of the shorthand notes of the proceedings in South Africa, which the Treasury Solicitor then saw for the first time. These documents were received on the 15th November. They were at once laid before Counsel, and, of course, the arrival of this further information made it necessary to consider further the course to be taken.

The Commission then sat in London on the 5th December, 1919, to hear arguments on the seven reserved points.

The argument was conducted by the Crown under circumstances of great difficulty. The advisers of the Crown had neither the proper material nor the particulars necessary to enable them to deal with the points, nor had Counsel adequate time to prepare the argument. In reply to the Attorney-General's request for further time, the Commission intimated that the Colonial Office had had the claim before them for a year, that they had had ample opportunity of cross-examining before the Commission in South Africa but had refrained from doing so.

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* 44388: not printed (refers to question of the Company's military expenditure). † 49759: not printed. ‡ See No. 19. § No. 20.

At the first meeting of the Commission which took place on their return from South Africa, the Attorney-General again very strongly represented the position in which the Crown were placed, and again urged the absolute necessity for having a proper statement of the Company's case, in the absence of which it was hopeless to expect that the advisers of the Crown could efficiently discharge their duties. He declared himself unable to understand why a claim for seven million pounds should be dealt with on the part of the advisers of the Crown with less care and particularity than would be shown if the claim was for seven hundred pounds. Supposing that the claimants were making an ordinary claim against the Crown, and that they presented a sheet of paper, which was the only claim that he had, he should immediately ask for full particulars.

The Attorney-General pointed out that he had raised this objection at the earliest moment, viz., at the first sitting of the Commission in London. He also called attention to the difference in view which appeared to exist in regard to the proper procedure, and indicated that questions such as those which had been reserved for argument were largely questions of fact which might be highly contentious, in respect of which, in so far as any evidence had been taken, there had been no cross-examination, and which, to deal with properly, would involve a great deal of time for consideration for inquiry and research.

The attitude of the Commission was that the reproach should have been addressed to those instructing the Attorney-General, that his suggestion was a belated one, that the Commission could not re-open the matters they had gone into in South Africa when the Crown might have dealt with them had they chosen to do so, and suggested that the responsibility for the omission to do so rested with the Treasury Solicitor.

I would again refer to the shorthand notes of the tenth day's proceedings for a full account of what took place.

The difficulty no doubt in part arose from the fact, to which I have already adverted, that the Commission did not take the view that the Inquiry should proceed on the ordinary lines which would be followed in arbitration or other legal proceedings, but apparently considered that the interests of the parties were confided to them, and that the extent to which any assistance was required from Counsel was a matter for themselves.

The Commission also appeared to consider that the Crown could have presented this case in South Africa, although having regard to the time available and other circumstances, what opportunity the advisers of the Crown in Rhodesia had of taking any effective part, I am unable to understand.

I have already pointed out that the Treasury Solicitor was not required to take any action in regard to this part of the proceedings.

Neither the Attorney-General nor the Treasury Solicitor had been instructed as to the views or intentions of His Majesty's Government in regard to these matters. It must, however, be plain to anyone that the Crown was placed in a position of great disadvantage. The Company, of course, were in full possession of all the facts and information relating to the history of the various matters under discussion. They had all their books and could instruct the Lord Advocate to present before the Commission such matters only as they might think it expedient to deal with.

The absence of any formulated claim in the nature of a statement of their case, or of the points involved, such as would have been set out in the Statement of Claim or in particulars which would have been ordered to be supplied in a Court of Justice, left the advisers of the Crown completely in the dark as to the case which they had to answer.

I assume, of course, that the Colonial Office has supplied this Department with all the information which was available and which was considered material to any of the questions which appeared to arise. This information was quite inadequate, but it is recognized that it may well be that the Colonial Office is not in a position to give further assistance.

On the other hand, the absence of any properly developed claim by the Company made it impossible for Counsel to indicate the particulars, points, or issues in respect of which efforts should be made to obtain further evidence or information, while the desire of the Commission to conclude their proceedings with the utmost dispatch made it useless in the time available to attempt to prosecute inquiries at large, whether in this country or in South Africa, in order to obtain information which might show what answer could be made to the Company.

To instance only one of the points involved, the Company claimed a sum of over two millions in respect of the expenses caused by the Matabele Rebellion. This raised the whole question as to the extent of the responsibility of the Company for the occurrence of the rebellion. It has, for example, been asserted that it was caused by their treatment of the natives and of their property, and that opportunity was afforded by the withdrawal of the whole of the police force to take part in the raid into the territory of the South African Republic, which was conducted by Dr. Jameson. The only material which has been forthcoming on this point is the report of Sir Richard Martin upon the native administration of the Company, which is contained in the Blue Book C.8547 of the year 1897. It is obvious that such a point as this involving so large a sum of money ought to be dealt with only after the most careful research.

Most of the other items raise the question whether the various payments are properly charged to administration. This is a very difficult question, and can only be decided by investigating the circumstances attending the payments. For instance, the Company claims three and one-half millions of pounds under the head "Southern Rhodesia Administration Account." No particulars were given of this item until December, 1919, and it now appears that this sum is made up of items some of which may be properly charged to administration while others would appear to have been incurred in conducting the ordinary commercial business of the Company.

It was under the very serious consideration of the Attorney-General and of Counsel whether in the circumstances to which I have referred it was proper for the Crown to take further part in the proceedings before the Commission, but realizing that the difficulties which had occurred were probably due to the absence of any clear understanding as to the nature of the Inquiry which the Commission had been appointed to conduct, the Attorney-General was unwilling that every effort should not be made to assist them as far as possible and with such material as the Crown had available. He consequently appeared and argued such of the reserved points as it was found possible in any way to deal with, and he succeeded after much pressure in obtaining certain further information from the Company This information is being examined, but the process is necessarily extremely laborious and lengthy and only covers a certain portion of the ground.

It is not for me to express any opinion as to whether a matter of this kind should be the subject of one kind of inquiry or of another; I am concerned only to make clear the present position lest it might be inferred from the fact that the Crown is represented before the Commission by the Attorney-General and Counsel and by the Treasury Solicitor, that the claims of the Company have been exhaustively sifted and as effectively criticized as would have been the case had the proceedings approximated more closely to that of an investigation conducted upon legal lines, and had the advisers of the Crown been fully instructed upon the matters in issue.

I am, &c.,

JOHN P. MELLOR.

5248

No. 26.

COLONIAL OFFICE to TREASURY SOLICITOR.

Downing Street, 6th February, 1920.

SIR,

I AM directed by Lord Milner to acknowledge the receipt of your letter of the 27th ultimo,* regarding the presentation of the case for the Crown before the Commission appointed to determine the sum due to the British South Africa Company in respect of its administrative expenditure in Southern Rhodesia.

2. The Secretary of State fully appreciates the difficulties experienced by the Attorney-General in the matter, and realizes that the preparation of the case for the Crown must involve the expenditure of much labour and time. Although it would have been desirable, if feasible, to have the award of the Commission before the Southern Rhodesian elections, it is still more important that the Company's claim should be thoroughly investigated in as much detail as the Attorney-General considers advisable; and if he thinks proper he is fully at liberty to represent to the Commission that this is the view of His Majesty's Government.

I am, &c.,

HENRY LAMBERT.

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* No. 25.

5248

No. 27.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 1.5 p.m., 6th February, 1920.)

TELEGRAM.

6TH FEBRUARY. Confidential. Since return of Lord Cave's Commission from South Africa, six meetings have been held here, but Attorney-General represents that preparation of case for Crown is laborious and lengthy process and cannot be rushed through before Southern Rhodesia elections. In the circumstances I have informed Attorney-General that though it would have been desirable, if feasible, to have award of Commission before forthcoming elections, it is still more important that claim should be thoroughly investigated, and that he is at liberty to represent to Commission that this is view of His Majesty's Government. Improbable, therefore, that report will be available before elections if these take place early in April.—(For the Secretary of State for the Colonies) L. S. AMERY.

19594

No. 28.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

(Received 19th April, 1920.)

SIR, 2, London Wall Buildings, E.C., 17th April, 1920.

I AM directed by my Board to draw attention to the very embarrassing and difficult position in which the British South Africa Company and the inhabitants of Southern Rhodesia are placed by the continued adjournments demanded by the legal representatives of the Crown, which have so far prevented the Commissioners, engaged in investigating the amount due to the Company for accumulated administrative deficits, from bringing their inquiries to a conclusion.

The financial policy of the Company with regard to administrative expenditure in Rhodesia cannot fail to be influenced by the results of this inquiry, and on that account the elections for the Legislative Council of Southern Rhodesia—long overdue—have been postponed to 30th April, by which date it was hoped that these results would be public property.

It will be remembered that the reference to this authoritative Commission was proposed to my Directors by the Secretary of State on 10th July, 1919,* as a fair and practical method of securing the prompt settlement which is desired by all parties. The proposal was accepted by my Directors on 11th July, 1919, and the Commissioners, who from the first have done their utmost to accelerate the proceedings, held their first meeting on the 29th July, 1919. On that occasion the Company's case was opened by the Lord Advocate, but the legal advisers of the Crown, then, as on many subsequent occasions, expressed their inability to reply owing to the insufficiency of their instructions.

After two sittings the Commission, as originally determined by the Secretary of State, and with the full knowledge of the legal advisers of the Government, proceeded to Rhodesia, where the Company's administrative accounts were exhaustively examined by a representative of Sir W. Peat, and submitted to the criticisms of representatives of the inhabitants at several public sittings.

After most patient inquiries the Commission stated that certain points would be reserved for discussion in London. On their return they resumed their sittings on 5th December, 1919; but though more than four months had elapsed since their appointment was publicly notified in the House of Commons, the Attorney-General still professed himself unprepared, and at each successive stage the proceedings have been prolonged by demands for further adjournments.

My Directors desire to point out that from the outset of the inquiry they have placed their officials and records, both in London and in Africa, at the disposal of the Commission, and have withheld no information that could throw any light upon the questions under investigation.

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* No. 3 in [Cmd. 1129.].

The Board and the people of Rhodesia were led to hope that a definite decision on the question at issue could be attained early this year, but Counsel for the Crown have now expressed their inability to proceed with their case without further inquiry in Rhodesia and reference to documents stated to be accessible only on the spot.

My Directors understand that the Solicitors to the Treasury have appointed agents in Rhodesia, and have furnished them with instructions for the prosecution of their investigations. My Directors have instructed their officials to afford the representatives of the Crown every facility in their power, and they earnestly appeal to the Secretary of State to take such steps as may be necessary to ensure that the inquiry will now be allowed to reach its final stage without further postponements and delays, so that, if possible, the Commission may arrive at a decision before the Long Vacation.

I am, &c.,
A. P. MILLAR,
Secretary.

29099

No. 29.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

(Received 12th June, 1920.)

[*Answered by No.* 30.]

Rhodesia House. 2, London Wall Buildings,
London, E.C.2, 11th June, 1920.

SIR,

I AM directed to refer to your letter of the 10th December last,* regarding the valuation of the lands which the Company is utilizing for commercial purposes, from which my Directors understood that instructions would be issued to Mr. J. P. Richardson to commence the work of valuation on behalf of His Majesty's Government as soon as possible.

In a telegram dated Bulawayo, the 26th ultimo, the Board is informed that, up to that date, Mr. Richardson had received no instructions to proceed with the work. As in all probability the proposed investigation will occupy a period of two months, the Board trusts that the Secretary of State will be good enough to arrange for Mr. Richardson to commence work at an early date in order that the valuation may be completed before the advent of the rainy season.

I am, &c.,
C. W. S. MAUDE,
Assistant Secretary.

29099

No. 30.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

Downing Street, 17th June, 1920.

SIR,

I AM directed by Viscount Milner to acknowledge the receipt of your letter of the 11th June,† regarding the valuation of the land in Southern Rhodesia used by the Company for commercial purposes, and to request you to inform your Directors that he has been in communication with the Treasury Solicitor respecting the instructions to the valuers suggested in your letter of the 16th December, 1919.‡

A further reply on the subject will be addressed to you as soon as possible.

I am, &c.,
HENRY LAMBERT.

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* No. 22. † No. 29. ‡ No. 23.

41811

No. 31.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

(Received 24th August, 1920.)

[*Answered by No.* 32.]

The British South Africa Company,
Rhodesia House, 2, London Wall Buildings,
London, E.C.2, 23rd August, 1920.

SIR,

I AM directed to refer to your letter, dated August,* enclosing a copy of a telegram from Viscount Milner to the High Commissioner for South Africa, regarding the resolution recently passed by the Legislative Council of Southern Rhodesia in favour of responsible government.

My Directors are greatly concerned to observe in this telegram a statement to the effect that Lord Cave's Commission is not likely to report "for some time." The embarrassing position in which the Company and the people of Rhodesia have been placed owing to the repeated delays in bringing the Inquiry to a conclusion was fully set out in the Secretary's letter to you of the 17th April last†, but when a few weeks subsequent to that date my Directors were advised that the sittings of the Commission were immediately to be resumed, they were encouraged to hope that a final stage was likely to be reached at least before the Long Vacation. Their hope was confirmed by Lord Cave's expressions at the twentieth sitting of the Commission on 30th June.

With this prospect the Board took the responsibility of postponing the General Meeting of shareholders, which should have been held in July, until October, and explained in a notice to the Press that they took this course in the confident expectation that the award would be available before that date, and that the important questions involved made it undesirable that the meeting should be held before the decision was known.

My Directors regard any further postponement of the General Meeting as out of the question. In these circumstances they desire respectfully to request that they may be furnished with information as to the intentions of the Government with regard to the further prosecution of the Inquiry in order that they may be able to acquaint the shareholders and the Rhodesian public with the exact position and, if possible, make a statement as to the date when the award may be expected.

I am, &c.,
H. PRICE POWELL,
Assistant Secretary.

47790

No. 32.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

Downing Street, 5th October, 1920.

SIR,

WITH reference to your letter of the 23rd August,‡ relative to the proceedings of Lord Cave's Commission, I am directed by the Secretary of State to request you to inform your Directors that he has been in communication with the Treasury Solicitor, who states that his agents in Rhodesia, Messrs. Coghlan and Welsh, were instructed in April last to inquire into certain matters which, in the opinion of Counsel advising the Crown, called for further explanation.

2. The Treasury Solicitor has now received certain interim reports from Rhodesia from which it appears that the figures in your Company's claim require most careful examination; and this is confirmed by a cable which he received from Messrs. Coghlan and Welsh on the 20th September, which concludes with the words "we recommend strongly we should have whatever time we consider necessary, as examination hitherto demonstrates necessity close scrutiny accounts." In view of the fact that Sir Charles Coghlan, as representing the Elected Members, took part in the proceedings before the Commission in South Africa, it is not considered that it would be consistent with their duty to the Crown for Counsel to ignore the recommendation of Sir Charles Coghlan's firm.

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* 33095: not printed here. The telegram is printed in African No. 1085. † No. 28. ‡ No. 31.

3. For the reasons stated, it is regretted that it is not possible, at present, to indicate a date on which the sittings of the Commission could be resumed for the purpose of bringing the Inquiry to a conclusion, but your Directors may be assured that all despatch is being used by the Crown's advisers consistent with a proper investigation of a claim of such magnitude.

I am, &c.,
HENRY LAMBERT.

60944

No. 33.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

[Answered by No. 34.]

Downing Street, 15th December, 1920.

SIR,

WITH reference to the letter from this Department of the 17th June* regarding the valuation of the land in Southern Rhodesia utilized by your Company for commercial purposes, I am directed by Viscount Milner to state that some doubt is felt by the legal advisers of the Crown whether the dates of reservation of the various areas in question given in the statement enclosed in your letter of the 16th December, 1919† can be accepted as the dates at which the lands are to be valued in accordance with the agreement previously arrived at, without further evidence on the subject being submitted. Other points also arise which require consideration, and Lord Milner has come to the conclusion that the best course in the circumstances would be that the matter should be referred to Lord Cave's Commission for directions as to the procedure to be adopted in order to enable the valuers appointed to value the land in question to proceed with their valuation in accordance with the agreement contained in the letters from the Company of the 3rd December, 1918,‡ and from the Colonial Office of the 10th July, 1919.§

2. Lord Milner presumes that your Directors will have no objection to this course, and I am to suggest that you should take steps to bring the matter before the Commission accordingly.

I am, &c.,
H. J. READ.

62573

No. 34.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

(Received 23rd December, 1920.)

Rhodesia House, 2, London Wall Buildings, London, E.C.2,
22nd December, 1920.

SIR,

I AM directed to acknowledge receipt of your letter of the 15th December,‖ and to say that my Directors have no objection to the course proposed therein.

My Directors will bring the matter before the Commission at its sitting to be held on the 10th January.

I am, &c.,
A. P. MILLAR,
Secretary.

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* No. 30. † No. 23. ‡ No. 1. § No. 3 in [Cmd. 1129]. ‖ No. 33.

2603

No. 35.

THE SECRETARY OF STATE to VISCOUNT CAVE.

MY LORD, Downing Street, 20th January, 1921.

I HAVE the honour to acknowledge the receipt of the report* regarding the sum which would be due to the British South Africa Company in accordance with the report of the Judicial Committee of the Privy Council if the administration of Southern Rhodesia by the Company had been determined on the 31st March, 1918.

The inquiry has proved to be unexpectedly laborious and protracted, and I desire to express to you and your colleagues on the Commission my warm appreciation of your services in connexion with the investigation.

I have noted with much pleasure the reference in the report to the services of the Advisory Accountant, Captain H. G, Howitt, D.S.O., M.C., and of the Secretary, Mr. H. N. Tait. I should add that it is possible that I may have to communicate with you further on the report, and to ask for the guidance of the Commission on certain points arising out of it.

I have, &c.,
MILNER.

3589

No. 36.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

(Received 22nd January, 1921.)

[*Answered by Nos.* 38 *and* 42.]

Rhodesia House, 2, London Wall Buildings,
London, E.C.2, 21st January, 1921.

SIR,

WITH reference to the interview with Sir Henry Lambert which Mr. H. Wilson Fox, M.P., and Mr. D. O. Malcolm, Directors of this Company, had on the 20th instant upon the subject of the Award of Lord Cave's Commission, I am directed to submit, for the consideration of the Secretary of State, certain matters left unsettled by the Award, upon which, in the view of the Board, it would be highly desirable in the interests of all concerned that directions should be given before the labours of the Commission are concluded.

The first of these matters relates to the difficulty which the Company must necessarily experience in making up its administrative accounts for the years subsequent to 31st March, 1918, upon any basis which it can be sure that the Crown will accept as correct, in the absence of any guidance as to the principles on which it should proceed in apportioning receipts or expenditure, as the case may be, between the administrative and commercial sides of its undertaking. The difficulty will be solved if the Commission can see its way to state the principles upon which it has proceeded in its Award in dealing with the questions which are set out in detail in the next paragraph.

The particular questions upon which, as above stated, direction is sought, are as follows:—

1. What items of mining revenue have been treated as administrative and commercial, respectively?
2. Has the credit of five per cent. to the Administration for the collection of commercial mining revenue been accepted as correct?
3. Have expenditure upon, and receipts from, the Bechuanaland Protectorate telegraphs been properly treated as administrative?
4. Has the charge against the Administration of fifty per cent. the cost of the Company's Head Office and of Directors' visits to Rhodesia been accepted as correct? If not, what principle has been followed in deciding this question?
5. Have the expenses charged against the receipts from land been awarded in full? If not, what proportion has been allowed, or what specific items have been disallowed?

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* No. 5 in [Cmd. 1129].

6. What is the figure as at 31st March, 1918, upon which depreciation of the Public Works and Buildings should be calculated for subsequent years, and on what principle should the calculation be made?
7. Has the Company's statement of the buildings which should be treated as Public Works been accepted?

(N.B.—Information on this point is necessary in order to settle the allocation of future rents as between administrative and commercial receipts.)

The second matter upon which my Directors suggest that the Commission might with propriety be invited to give a supplementary ruling relates to lands and rights alienated by the Company for consideration other than cash.

My Directors propose to address to you a further letter upon this matter in the course of next week.

I am, &c.,
A. P. MILLAR,
Secretary.

3589

No. 37.

COLONIAL OFFICE to VISCOUNT CAVE.

[*Answered by No.* 41.]

Downing Street, 25th January, 1921.

MY LORD,

I AM directed by Viscount Milner to transmit to you a copy of a letter* which has been received from the British South Africa Company, asking for guidance as to the principles upon which the Southern Rhodesia Commission proceeded in dealing with certain questions which are set out in the Company's letter.

2. Lord Milner would be much obliged if the Commission could supply the information desired by the Company.

I am, &c.,
HENRY LAMBERT.

3589

No. 38.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

Downing Street, 25th January, 1921.

SIR,

I AM directed by Viscount Milner to acknowledge the receipt of your letter of the 21st instant,* asking for guidance as to the principles upon which the Southern Rhodesia Commission proceeded in dealing with certain questions set out in your letter, and to state that he is referring your letter to the Commission.

I am, &c.,
HENRY LAMBERT.

5343

No. 39.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

(Received 2nd February, 1921.)

[*Answered by No.* 42.]

(Confidential.)

Rhodesia House, 2, London Wall Buildings, 1st February, 1921.

SIR,

WITH reference to my letter, of the 21st ultimo,* on the subject of certain matters upon which it is suggested that Lord Cave's Commission might be invited to give supplementary rulings, I am directed to request you to call the Secretary of State's attention to the particular question of lands and rights alienated by the Company for consideration other than cash.

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* No. 36.

Upon this question the Award expresses the view that "an arrangement should be made for referring to a proper tribunal any difference that may arise in relation to such lands or rights." But the course proposed by the Commission appears necessarily to involve the indefinite protraction of complicated and costly legal proceedings. The practical difficulties of this course arise not only from the number of the individual grants which may have to be dealt with, but from the fact that the circumstances of individual cases differ so widely, that many of them may have to be dealt with as, so to speak, separate law suits. Moreover, the trouble and expense of an individual case may be very considerable notwithstanding that the amount involved may be relatively small.

2. In the first place it is not clear what precisely are the grants for which the Company ought to account to the Crown.

3. In regard to some grants that have been made the Company has admitted liability to the Crown, and in framing its claim debited itself with a sum of £39,885 on this account. In addition, in a statement handed in to the Commission and to the Crown's representative, the Company admitted that 11,250 Ordinary shares in the Victoria Falls and Transvaal Power Company might also properly be transferred to the Crown. But it is not clear whether the Commission, in framing its award, debited the Company with anything, and, if so, with how much on this account. If the Company has already been debited with something it is evident that it ought not to be similarly debited afresh.

4. On the other hand, it has been admitted by the Crown, before the Commission, that the Crown is not interested in any receipts from land (or consequently in any grants of land or rights) made prior to the date as from which the Company is entitled to claim from the Crown its net expenditure upon administration (see for instance Mr. Russell Davies on the sixteenth day transcript of the proceedings before the Commission, page 130, line 3,128, and following, and on the seventeenth day transcript, page 139, line 988, and following).

But the Commission's report* does not show at what date accountability as between the Crown and the Company commenced. The Crown contended throughout that that date was the date of the Order in Council of 1894. If that view is correct there can be nothing for the Company to account for in respect of grants made before that date, and it would seem to follow that receipts accrued since that date from all lands alienated before it should be credited to the Company, but the Commission's report does not show whether such receipts have been so credited. It should be added that some of the grants referred to in the preceding paragraph were made before 1894.

5. In any case, unless the grants referred to above in paragraph 3 are the only ones in respect of which the Company has to account to the Crown, the question may arise in regard to a very large number of grants whether or to what extent the real benefit of them accrued to the Company in its commercial capacity or to the Crown as the authority ultimately interested in the settlement and good government of Southern Rhodesia. Presumably it is only when, if ever, the whole benefit of a grant has accrued to the Company in its commercial capacity that the Company can have to account for the whole value of a grant. Presumably, also, where the whole benefit has accrued to the public, that is to the Crown, as, solely for the sake of example, in the case of a grant to a religious body for founding a church, a school, or a native mission, there can be nothing to account for. But, as already suggested, the special circumstances of particular grants might give rise to endless dispute as to the degree in which the Company, in its commercial capacity, and the Crown respectively benefited by them, and might furnish the material for an unknown number of lengthy and difficult lawsuits.

Moreover, the records of many early land grants are to-day very imperfect or have altogether disappeared, since prior to the report of the Judicial Committee of the Privy Council there was no reason why a company which in regard to its dealings with land regarded itself as a purely commercial corporation should preserve carefully all the records of transactions long ago concluded. Witnesses whose evidence would be material are dead, or could not be compelled to appear.

6. The question also dealt with in paragraph 7 of the Commission's report of the Crown lands appropriated by the Company for the purposes of its own purely commercial undertaking, such as ranches and estates, is less difficult, but even here the Commission by directing that the value of these lands, for which admittedly the Company has to account, should be ascertained as at the date of the first definite

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* No. 5 in [Cmd. 1129.]

act of appropriation of them to the Company's purposes suggests the raising of questions as to what in particular cases constituted the first definite act of appropriation—questions which it would be quite impossible to entrust to the final decision of valuers, such as the gentlemen whose appointment to act in this matter has previously formed the subject of correspondence between the Company and the Colonial Office.

7. Still more would it be beyond the competence of these gentlemen to deal with questions such as those suggested in paragraphs 1 to 5 of this letter. It is indeed evident that if a new tribunal is to deal with all the questions left open by paragraph 7 of the Commission's report it will be a matter of extreme difficulty to select and agree upon its personnel. No tribunal indeed could deal with these matters satisfactorily or with sufficient knowledge of the considerations which have guided Lord Cave's Commission in framing its award except that Commission itself; but it is far from being my Directors' intention to suggest that that Commission should be kept in existence in order to deal with a most laborious detailed investigation which would probably be a work of years.

8. It was in order that a prompt, final, and complete settlement of account as between the Crown and the Company might be arrived at that the appointment of Lord Cave's Commission was first suggested by the Secretary of State to my Directors, and agreed to by them. With a view to the full achievement of this object, my Directors venture to suggest that the matters left open by paragraph 7 of the Commission's report might properly form the subject of an agreed settlement between them and the Secretary of State, to be effected by way of a lump sum deduction from the figure of £4,435,225 given in the Commission's report. The Company has already, in the proceedings before Lord Cave's Commission, stated certain sums which it has been prepared to regard as fairly chargeable against itself in respect of the matters in question; and my Directors cannot doubt that if they were allowed to meet the Secretary of State and his advisers at a conference it would be possible speedily to arrive at an agreed settlement of the nature above indicated, and thus to avoid the indefinite prolongation of costly proceedings which, in one form or another, have now been going on ever since at the beginning of the year 1914 Lord Harcourt first decided to refer the Southern Rhodesian land question to the Judicial Committee of the Privy Council.

9. My Directors earnestly hope that the Secretary of State will see his way to agree to the course suggested. If unhappily he should find himself unable to do so, my Directors must ask that this letter may be treated as confidential and written without prejudice, but that, in order that proceedings before a new tribunal such as is contemplated by the report of Lord Cave's Commission may be, so far as possible, expedited, and that the tribunal may be helped to arrive at equitable decisions, the Commission may be asked to state (i) at what date accountability as between the Crown and the Company commenced; (ii) whether, in the case of any particular grant of land or rights for consideration, other than cash, the extent of the Company's accountability should be measured by the extent to which the benefit derived from making the grant inured to the Company in its commercial capacity or, if not, what principle should be followed; (iii) whether the Company has already been debited with anything, and, if so, with how much in respect of the grants referred to in paragraph 3 above; (iv) whether the Company has been credited with anything, and, if so, with how much in respect of receipts accrued since the date when accountability as between the Crown and the Company commenced from land granted before that date.

I am, etc.,
A. P. MILLAR,
Secretary.

5343

No. 40.

COLONIAL OFFICE to VISCOUNT CAVE.

[*Answered by No.* 41.]

MY LORD, Downing Street, 12th February, 1921.

WITH reference to the letter from this Department of the 25th January,* I am directed by Viscount Milner to inform you that a further letter has now been received from the British South Africa Company regarding the question of the lands and rights alienated by the Company for considerations other than cash.

2. In the course of the letter, the Company make the following observations :—

"2. In the first place . . . . [paragraphs 2-5 of No. 39] . . . . be compelled to appear."

3. Your Lordship will understand that the Secretary of State, or any Tribunal which might have to be appointed to inquire into the matter, would be in a position of difficulty without some authoritative statement as to the attitude which was taken by the Commission in regard to the points raised by the Company. It would therefore be of great assistance if you could supply information regarding the following points which arise in this connexion :—

(i) At what date has accountability as between the Crown and the Company been regarded as commencing?

(ii) In cases such as those mentioned in schedules 2 and 5 of the list of land grants submitted by the Company to the Commission, where the Company claim that the grants have been made for the general development of the territory, should the Company be required to give any credit to the Crown, and, if so, on what principle should the extent of the Company's accountability be determined?

(iii) Has the Company already been debited with anything, and, if so, with how much in respect of the grants referred to in the paragraph numbered 3 of the extract from the Company's letter quoted above?

(iv) Has the Company been credited with anything, and, if so, with how much in respect of receipts accrued since the date when accountability as between the Crown and the Company commenced, from land granted before that date?

4. The Secretary of State regrets having to trouble you regarding these points, but it is hoped that these queries finally dispose of the points which have arisen out of the report of the Commission.

I am, etc.,
HENRY LAMBERT.

8917

No. 41.

VISCOUNT CAVE to COLONIAL OFFICE.

(Received 24th February, 1921.)

SIR, 22nd February, 1921.

IN reply to your letter of the 25th January,* enclosing copy of a letter from the British South Africa Company, I send you herewith a note on the several questions raised. At the same time, I think that it should be clearly understood that this information is given as a matter of courtesy and in order to assist the Company in framing its accounts, and not with any intention of discussing the details of the figures given in our report.

With reference to your letter of the 12th February,† containing extracts from a further letter of the Company, I can only say that the Company has not been debited with any sum in respect of the grants referred to in paragraph 3 of the extract. The remainder of the extract appears to relate to questions of detail which should be settled (in case of difference) by the tribunal referred to in the report.

Yours faithfully,
CAVE.

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* No. 37. † No. 40.

Enclosure in No. 41.

NOTE ON QUESTIONS RAISED IN THE LETTER FROM THE BRITISH SOUTH AFRICA COMPANY OF THE 21ST JANUARY.

THE mining revenue was apportioned as follows:—

Administrative.	*Commercial.*	*Half Commercial and half Administrative.*
Registration.	Royalties on gold, etc.	Prospecting Licences.
Transfers.	Royalties on coal.	Extra Licences.
Site Rents.	Royalties on pebbles.	Inspection by work. Protection. Claim and alluvial licences (after deducting refund of claims).
		Extra work certificates.
		Inspection by payments.
		Coal selection fees.
		Miscellaneous.

2. The Administration was given credit for five per cent. on the royalties collected, and the remaining expenses of the Mines Department, after deducting the five per cent. commission, were apportioned between the administrative and commercial sides in proportion to the revenue (other than royalties) accruing to each on the basis of calculation adopted in paragraph 1.

3. The expenditure upon and receipts from the Bechuanaland Protectorate Telegraphs were treated as Administrative on the assumption that the Crown would wish to take over this system.

4. The Head Office expenses from 1894 were allowed as a charge against the Administration to the extent of the £10,000 per annum plus forty per cent. of the expenses of the Directors' visits to Rhodesia. For the pre-1894 period a smaller allowance was made.

5. The expenses charged against the receipts from land have been allowed in full.

6. The figure at 31st March, 1918, upon which depreciation of Public Works and Buildings should be calculated for future years, is £831,243, arrived at as follows:—

Total cost	£1,691,538
Less cost of roads and depreciation allowed to 31st March, 1918	£860,295
	£831,243

This sum is composed of:—

Buildings	£669,176
Telegraphs	£162,067
	£831,243

The principle upon which depreciation was calculated up to 31st March, 1918, is not regarded as affording a basis for calculation in the future.

7. The Company's statement of the buildings which should be treated as public works has been accepted.

No. 42.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

[*Answered by No.* 44.]

(Confidential.)

SIR, Downing Street, 10th March, 1921.

WITH reference to your letter of the 21st January, and your Confidential letter of the 1st February,* I am directed to transmit to you, for the information of your Directors, copies of correspondence with Viscount Cave† relative to the points raised in your letters in connexion with the award of the Southern Rhodesia Commission.

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* Nos. 36 and 39. † Nos. 37, 40, and 41.

2. A further communication will be addressed to you later on the subject of the lands and rights alienated by the Company for considerations other than cash.

3. I am also to enclose a draft of a public despatch* which it is proposed to address to the High Commissioner for South Africa on the subject, and to inquire whether your Directors concur in its terms. It is considered that the information furnished by Lord Cave is of considerable public interest and should be on record in a document which can be made public.

I am, &c.,
HENRY LAMBERT.

8917

No. 43.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Confidential.)

Downing Street, 12th March, 1921.

SIR,

WITH reference to my despatch No. 69, of the 17th February,† I have the honour to transmit to Your Royal Highness copies of correspondence‡ with the British South Africa Company and with Viscount Cave, relative to certain points raised by the Company in connexion with the award of the Southern Rhodesia Commission.

British South Africa Company, 21st January.
To Lord Cave, 25th January.
British South Africa Company, 1st Februory.
To Lord Cave, 12th February.
Lord Cave, 22nd February.
To British South Africa Company, 10th March.

I have, &c.,
(For the Secretary of State),
L. S. AMERY.

12720

No. 44.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

(Received 15th March, 1921.)

(Confidential.)

Rhodesia House, London Wall Buildings,
London, E.C.2, 14th March, 1921.

SIR,

I AM directed to acknowledge the receipt of your Confidential letter of the 10th March,§ and to ask that the Company's thanks may be conveyed to Lord Cave for his courtesy in affording the information contained in the note enclosed in his letter of the 22nd February.‖

With regard to the draft despatch to the High Commissioner for South Africa attached to your letter, my Directors would suggest that the concluding paragraph (paragraph 3) should be omitted.

The Company's letter of the 1st February¶ raised a number of important and difficult points, some of which, being those upon which it was thought that Lord Cave might be prepared to throw light, were referred to him in your letter of the 12th February.** Lord Cave has dealt with only one, and that a comparatively minor one, of these points; and with this exception all the difficulty which, as indicated in paragraph 3 of your letter to Lord Cave, of 12th February, would confront any tribunal such as is contemplated in paragraph 7 of the Cave Award, remains undiminished.

In these circumstances it seems to my Directors to be better not to make any reference in a despatch, which it is contemplated should ultimately be published, to the matters dealt with in my letter of the 1st February,¶ but to confine the despatch to giving the substance of the note enclosed in Lord Cave's letter of the 22nd February, which note is most valuable as affording guidance to the Company in making up its accounts as between itself and the Crown for the years subsequent to the 31st March, 1918.

Subject to the foregoing observations my Directors concur in the draft despatch attached to your letter.

I am, &c.,
G. C. CANDLER,
(for Secretary).

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* The despatch, as sent, is printed at page 20 of [Cmd. 1273]. † 8424: not printed. This forwarded copies of [Cmd. 1129]. ‡ Nos. 36, 37, 39, 40, 41, and 42. § No. 42. ‖ No. 41. ¶ No. 39. ** No. 40.

30954

No. 45.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

(Received 21st June, 1921.)

[*Answered by No.* 46.]

The British South Africa Company, Rhodesia House,
2, London Wall Buildings, London, E.C.2, 20th June, 1921.

SIR,

I AM directed to refer to the Report* of the Commission appointed to take an account of what would be due to the Company in accordance with the Report of the Judicial Committee of the Privy Council if the administration of Southern Rhodesia by the Company had been determined on the 31st March, 1918, and to transmit to you, for the information of Mr. Secretary Churchill, accounts† made up to the 31st March, 1919, and to 31st March, 1920, which have been prepared in a similar manner to that adopted by the Commission in paragraph 9 of its Report.

With regard to the charge included in these accounts for expenses incurred in London in respect of the administration of Southern Rhodesia and of the disposal of Crown land in that territory, it will be remembered that the Company claimed £431,531 on account of these expenses for the period from 1894 to 1918, being one-half of the total London Office expenses for that period, viz., £863,062, and was allowed by the Commission £10,000 per annum, or a sum of £240,000, which was 27·8 per cent. of the total expenses. Since 1918 the rent, rates, salaries, and office expenses which have to be paid by the Company have materially increased, as they have in the case of every other Company and Government, and my Directors feel sure that the Secretary of State will agree that it would not be reasonable that Southern Rhodesia alone should escape, at the Company's expense, from the effects of the all-round rise which has taken place since 1918 in the cost of the services performed on its behalf. The Directors think, therefore, that in the circumstances it would be fair to charge against the Crown, for each year subsequent to 1918, a sum bearing the same proportion to the total Head Office expenses for each year as £240,000 bore to the total of these expenses for the period from 1894 to 1918. The amounts which have been included in the enclosed accounts for the years ended 31st March, 1919, and 31st March, 1920, in respect of Head Office expenses, have been calculated accordingly at £13,308 and £15,908, respectively, the total London Office expenses for those years having been £47,874 and £57,223, respectively.

In the absence of any guide as to the rate of depreciation of Public Works and Buildings adopted by the Commission up to the 31st March, 1918, and bearing in mind the note of Lord Cave in his letter to you of the 22nd February, 1921,‡ that the principle upon which depreciation was calculated up to 31st March, 1918, was not regarded by the Commission as affording a basis for calculation in the future, my Directors asked the Administrator to ascertain from the Public Works Department in Rhodesia what would be a suitable rate of depreciation to apply in respect of buildings and telegraphs. A copy of the Administrator's reply, which was communicated by cable on the 11th May, is enclosed, together with a copy of subsequent cables on the subject of the rate recommended by the Administrator in respect of telegraphs. The rates of depreciation which have been adopted by the Directors in the enclosed accounts are those which have been recommended by the Administrator, namely six per cent. in respect of buildings and one and one-half per cent. in respect of telegraphs.

With regard to the items in the accounts described as moveable assets, debtor balances less creditor balances, fire insurance fund investments, and capital expenditure in connexion with Land Settlements, I am to say that detailed schedules of these are available in this office, and that copies of them can be furnished for the information of the Secretary of State, if desired.

As the official audit of the Company's balance sheet and accounts for the year ended 31st March, 1920, has not yet been completed, the Secretary of State will understand that the enclosed figures are subject to final audit, but, subject to this, my Directors would be glad to learn that the Secretary of State accepts these accounts as correct.

I am, &c.,
PERCY J. BAIRD,
Chief Accountant.

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* No. 5 in [Cmd. 1129]. † Not printed. ‡ No. 41.

Enclosure 1 in No. 45.

THE ADMINISTRATOR, SOUTHERN RHODESIA, to THE BRITISH SOUTH AFRICA COMPANY.

TELEGRAM.

SALISBURY, 11th May, 1921. No. 496. With reference to Chief Accountant's letter 17th March, rates of depreciation recommended after consultation with Commercial Representative are one and one-half per cent. telegraphs, and six per cent. buildings, on capital sum determined annually on 31st March.

Enclosure 2 in No. 45.

THE BRITISH SOUTH AFRICA COMPANY to THE ADMINISTRATOR, SOUTHERN RHODESIA.

TELEGRAM.

26TH MAY, 1921. No. 108. Referring to your cable No. 496, one and one-half per cent. telegraphs seems low rate. Presume view taken is that because renewals are charged to revenue account, shrinkage in value of telegraph system is very slight.

Enclosure 3 in No. 45.

THE ADMINISTRATOR, SOUTHERN RHODESIA, to THE BRITISH SOUTH AFRICA COMPANY.

TELEGRAM.

SALISBURY, 7th June, 1921. No. 522. Referring to your cable No. 108, Telegraphs. Yes.

30954

No. 46.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

SIR, Downing Street, 12th August, 1921.

I AM directed by Mr. Secretary Churchill to acknowledge the receipt of your letters of the 20th June and 4th August,* relative to the accounts of the British South Africa Company for the years ended the 31st March, 1919, and the 31st March, 1920, and to express his regret that he is not at present in a position to return a reply to your Directors' inquiry, but that one will be sent as soon as possible.

2. In the meantime, I am to request that copies of the schedules referred to in the penultimate paragraph of your letter of the 20th June may be supplied for the use of this Office.

I am, &c.,
HENRY LAMBERT.

55285

No. 47.

THE BRITISH SOUTH AFRICA COMPANY to COLONIAL OFFICE.

(Received 8th November, 1921.)

[*Answered by No.* 49.]

The British South Africa Company,
Rhodesia House, 2, London Wall Buildings,
London, E.C.2, 7th November, 1921.

SIR,

I AM directed to inform you that the Board of the British South Africa Company, having obtained the opinion of eminent counsel, are advised that the interpretation put by the Judicial Committee of the Privy Council on the contractual rights and obligations of the Company and the Crown *inter se* involves a right to interest from the Crown on the amount found by Lord Cave's Commission to be due to the Company.

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* No. 45; and 39171 reminder, not printed.

2. No claim is made for interest prior to the 31st March, 1918, since the Company agreed in advance to accept the sum awarded by the Cave Commission as the total amount due as at the 31st March, 1918. It is pointed out that the Cave Commission had no jurisdiction to vary the interpretation of the decision of the Judicial Committee, and whether it saw fit to add interest down to the 31st March or not, the right to interest as from that date, if involved in the decision of the Judicial Committee, is unaffected by the Commission's award.

3. But for the years subsequent to 31st March, 1918, the Company claims interest on the amount of the Award, with adjustments for any increase or decrease from year to year.

4. I am to inquire whether the Crown admits this claim.

5. Further, in regard to the Company's legal rights as declared in the report of the Judicial Committee of the Privy Council on the determination of the Company's administration of Southern Rhodesia by the Crown, the Board are advised that there appear to be three interpretations which might conceivably be put forward:

(1) That the Company is entitled in any event to full reimbursement of the administrative deficit as determined. The source from which the Crown would derive the funds for making this reimbursement would, as the Judicial Committee points out, be either general public funds or sales of land or otherwise, but that is a matter which does not affect the Company's right to full reimbursement, and the amount and date of payment cannot be affected by the source which the Crown elects to draw upon.

(2) That the Company has the right to have its reimbursement secured to it out of the sales of lands, the lands being dealt with in the manner best calculated to effect such reimbursement.

(3) That the Crown has the right to deal in any way it chooses with the lands, merely handing over to the Company such proceeds as may arise from sales conducted without any reference to any rights of the Company to be secured reimbursement. Under this view the Crown might, if it thought fit for any reason, by selling the lands for a nominal price deprive the Company of any reimbursement.

6. The Company are advised that their rights are as set out in sub-paragraph (1) in the preceding paragraph, and that the administrative deficit to the full reimbursement of which they will be entitled on the determination of the Company's administration of Southern Rhodesia by the Crown will include any interest accrued since 31st March, 1918.

7. A large number of communications received by the Company from the Colonial Office, since the report of the Judicial Committee of the Privy Council was issued, suggest that the Crown takes the view set out in sub-paragraph (3) in paragraph 5 of this letter, which, the Company are advised, is not in accordance with their rights as declared in the report of the Judicial Committee of the Privy Council. This appears more particularly from paragraph 48 (3) of the draft Letters Patent providing for Responsible Government in Southern Rhodesia, prepared by the Secretary of State's instructions, and communicated to the Company under cover of your letter "Confidential" of the 13th October, 1921.* That paragraph appears to impose no duty at all on the Crown Land Agent to have any regard to the Company's right. It is lawful for him to sell, but he is under no obligation to do so; and whereas he is expressly ordered to have regard to the public interest and the interest of natives, there is no mention of any interest of the Company in the land. (See the detailed criticism of paragraph 48 of the draft Letters Patent in the notes enclosed in the Company's letter of 24th October.†)

8. This matter, and that referred to in paragraphs 1 to 4 above, relating to interest, are clearly of vital importance to the Company. Upon them it depends whether the Company are entitled to interest upon a sum of over £4,000,000 for a period of at least four years, even assuming that the Company's administration is determined as early as 31st March, 1922, and thereafter so long as the principal sum remains unrepaid, and whether the Company is really and effectively secured of the repayment at any time of the principal sum itself. In other words, upon these matters it depends whether a sum equal to more than half the Company's issued capital can be reckoned upon as available for the shareholders' benefit or whether it must be regarded as represented by a doubtful asset or indeed by any asset at all.

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* 48824: not printed. The draft Letters Patent are printed in [Cmd. 1573]. † 53131 in African No. 1085.

9. It is obvious that any uncertainty in regard to these matters is bound to produce, and does in fact produce, a destructive effect upon the Company's credit, which effect is heightened by apprehension that the Crown's views in regard to them differ from the Company's.

10. The Company cannot allow these matters to remain any longer in doubt. I am to request, therefore, that the Secretary of State may state (1) what view of the Company's rights is taken by His Majesty's Government, (2) whether they admit the Company's claim to interest as set forth in paragraphs 1 to 4 of this letter, and (3) whether they admit the Company's view as set forth in paragraphs 6 and 7 of this letter.

11. The Company are advised that it is open to them to ask for a declaration of their rights by Petition of Right, and the Company are prepared so to proceed unless His Majesty's Government acquiesce in the Company's statement of their rights as above set forth.

I am, &c.,
A. P. MILLAR,
Secretary.

55285

No. 48.

COLONIAL OFFICE to TREASURY.

SIR, Downing Street, 14th November, 1921.

I AM directed by Mr. Secretary Churchill to transmit to you, to be laid before the Lords Commissioners of the Treasury, a copy of a letter from the British South Africa Company* regarding the rights of the Company under the report of the Judicial Committee of the Privy Council in the Southern Rhodesia land case.

2. The claims now put forward by the Company entail serious financial consequences, and will have an important bearing on the discussions now taking place with the delegates from Southern Rhodesia regarding the future government of that territory. Mr. Churchill would be glad if the letter could be referred to the Treasury Solicitor, who is familiar with the subject, with a view to the advice of the Law Officers being obtained as to the reply to be made to the Company. For this purpose a memorandum† is enclosed which explains the recent history of this question.

3. It would be convenient also if the Law Officers would advise whether, if the Company's present claims are not accepted as correct, there is anything in the terms of clause 48 of the draft Letters Patent (see annexure 7 to the enclosed memorandum) which is inconsistent with the rights of the Company under the report of the Judicial Committee.

The Law Officers should also be asked to advise whether, if the Company's present claim is rejected, liability for any payment in cash on the part of the Crown, beyond payments for buildings and works taken over under Article 33 of the Charter, should at the same time be repudiated, and also whether, in their opinion, the Company are in law entitled to any concessions in respect of either minerals or railways beyond what already appear in the draft Letters Patent.

4. It is important that the Law Officers' opinion should be obtained as soon as possible, and Mr. Churchill would be obliged, therefore, if the matter could be dealt with as one of considerable urgency.

I am, &c.,
E. R. DARNLEY.

60438

No. 49.

COLONIAL OFFICE to THE BRITISH SOUTH AFRICA COMPANY.

SIR, Downing Street, 20th December, 1921.

IN reply to your letter of the 7th November,* I am directed by Mr. Secretary Churchill to request you to inform your Directors that the question of the rights of the British South Africa Company under the Report of the Judicial Committee of the Privy Council in the Southern Rhodesia land case has been submitted to the Legal Advisers of the Crown, and they have advised :—

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* No. 47. † Printed as Appendix II.

(1) That the Company is not entitled to interest on the amount found due by the Cave Commission as from the 31st March, 1918.

(2) That the contention set out in sub-paragraph (1) of paragraph 5 of your letter is not correct.

(3) That there is nothing in the terms of clause 48 of the draft Letters Patent which is inconsistent with the rights of the Company under the Report of the Judicial Committee.

I am, &c.,

C. T. DAVIS.

60438

No. 50.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Confidential. (2))

Downing Street, 21st December, 1921.

SIR,

IN my Confidential despatch of the 24th November,* I had the honour to inform Your Royal Highness that the question of the rights of the British South Africa Company under the Report of the Judicial Committee of the Privy Council in the Southern Rhodesia land case, which was the subject of the Company's letter of the 7th November,† had been submitted to the Law Officers of the Crown.

2. The following questions were put to the Attorney-General and other Counsel:—

(1) Whether the Company is entitled to interest on the amount found due by the Cave Commission as from the 31st March, 1918?

(2) As regards the unalienated land, whether, as claimed by the Company, the Company is entitled to full reimbursement of the administrative deficits as determined by the Cave Commission, and the amount, and date of payment, of such deficits cannot be affected by the source which the Crown elects to draw from, which might be either general public funds or sales of land or otherwise; or, if not, what are the rights of the Company in respect of the unalienated land and the administrative deficits?

(3) Whether there is anything in the terms of clause 48 of the draft Letters Patent which is inconsistent with the rights of the Company under the Report of the Judicial Committee?

(4) Whether the Company are in law entitled to any concessions in respect of either minerals or railways beyond what already appears in the draft Letters Patent?

(5) Whether the Imperial Treasury will be directly responsible for paying to the Company whatever is due in respect of the buildings and works belonging to the Company used exclusively or mainly for administrative or public purposes which are taken over under clause 33 of the Charter, or whether the new Government of Southern Rhodesia, which it is proposed to set up by Letters Patent, could be left to make its own arrangements with the Company for paying for whatever buildings, etc., such new Government wishes to acquire?

3. In reply to these questions Counsel have advised that:—

(1) The answer is, No.

(2) The right of the Company "to look to the Crown to secure to it . . . . . the due reimbursement of any outstanding balance of aggregated advances made by it for necessary and proper expenditure upon the administration of Southern Rhodesia" does not arise until the Company's administration of Southern Rhodesia is determined by the Crown, and then only "either out of the proceeds of further sales of the lands by whomsoever made, or, if the Crown should grant away those lands or proceeds to others from public funds." (See the last paragraph of the Report of the Judicial Committee.) The second alternative, i.e., the right to look to the Crown to secure reimbursement from public funds, does not arise, as the Crown has not "granted away the lands or proceeds to others." The Crown is, in fact, securing to the Company reimbursement "out of the proceeds of further sales of lands," as indicated in the first alternative. The contention of the Company is accordingly in our view unsound.

(3) The answer is, No.

(4) The answer is, No.

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* 58573: not printed. This enclosed copies of the draft Letters Patent and No. 47. † No. 47.

(5) Clause 33 of the Charter gives to the Crown the right to take over "any buildings or works belonging to the Company and used exclusively or mainly for administrative or public purposes on payment of reasonable compensation." If this right is exercised, the obligation to pay will fall upon the Imperial Treasury. If the right is not exercised by the Crown there is no obligation upon the Crown or upon the new Government to purchase any such buildings or works, or upon the Company to sell to the new Government, and the transfer of such buildings or works would become a matter of contract. It is to be observed that buildings or works, the cost of which has been debited to Administrative revenue, must be handed over by the Company without compensation.

(6) Since the original Instructions were delivered, Counsel were asked to advise with reference to the value of the moveable assets and the debtor and creditor balances at the date of the termination of Company administration. In their opinion the property in moveable assets, the cost of which has been debited to Administration, will pass to the Crown, and such assets must be handed over to the Crown without any payment in cash. The Company's only right is to security for its administrative deficit as indicated above. With regard to the debtor and creditor balances, these would be added to or deducted from the administrative deficit.

4. I enclose a copy of a letter* which has been sent to the Company in reply to their letter of the 7th November.

I have, &c.,
WINSTON S. CHURCHILL.

71429

Appendix I.

Schedule of Crown Land held in Southern Rhodesia by the British South Africa Company for Commercial Purposes.

Estate.	District.	Farm.	Acres.	Value at date of Reservation.						Date of Reservation.	Remarks.
				per acre.	£	s.	d.	£	s.	d.	
Rhodesdale Ranch	Hartley and Gwelo	Bergplaats ...	3,176		1,000	0	0				Purchased for £500 plus 3,124 acres of Crown land valued at £500.
		Sabakwe Estate...	18,954		3,582	0	0				1916
		Balance of Ranch	875,303	2/-	87,530	6	0				1912
		Depot on Railway	1,291	3/-	193	13	0				1912
			898,724		92,305	19	0				
				Deduct £500 cash paid by Company	500	0	0				
								91,805	19	0	
Nuanetsi Ranch	Chibi and Gwanda		2,500,000	1/6				187,500	0	0	1912
Tokwe Ranch	Victoria	Tokwe Ranch ...	85,165	2/-				8,516	10	0	1912
Shangani Estate	Bubi Insiza and Gwelo	Bulawayo Syndicate Block	43,243		14,000	0	0				1916
		Mbati Tiabetsi Block	29,298								
		Pongo Farm Estate	3,978		3,700	0	0				1917
		Shangani Reserve	4,559	5/-	1,844	5	0				1914
		Reserve on Railway	2,818								1914
								19,544	5	0	
Mazoe Estate	Mazoe	Bloomfield ...	2,309		8,000	0	0				Purchased in 1917 for £2,213 cash plus 21,734 acres of Crown land valued at £5,787.
				Deduct £2,213 paid by the Company on cash	2,213	0	0				
					5,787	0	0				

* No. 49.

Estate	District.	Farm.	Acres.	Value at date of Reservation.						Date of Reservation.	Remarks.
				per acre	£	s.	d.	£	s.	d.	
		Maggiesdale ...	3,355	2/6	419	7	6				1917
		Tataguna ...	2,434	30/-	3,651	0	0				1917
		Valeria and adjoining unsurveyed land	18,441	2/6	2,305	2	6				1917
		Plot on left bank Mazoe River	157	10/-	78	10	0				1910
								12,241	0	0	
Premier Estate	Umtali	Odzi Junction Reserve	920	6/-	276	0	0				1918
		Reserve adjoining "The Grange"	673	5/-	168	5	0				1913
		Portion of Premier Main	1,733	3/-	259	19	0				1907
		Portion of "The Dairy"	620	3/-	93	0	0				1907
		Reserve adjoining Mtikas Kloof	2,116	6/-	634	16	0				1914
		Reserve South of "Fairholm"	1,937	4/-	387	8	0				1914
		Reserve South of Imbeza Plots	3,135	6/-	940	10	0				1912
		Imbeza Plots Nos. 13-16	951	6/-	285	6	0				1912
		Area North of Imbeza Plots Nos. 14-15	195	12/-	117	0	0				1915
		Area adjoining Reserve No. 1	266		68	0	0				
								3,230	4	0	
Sinoia	Lomagundi	Unsurveyed land	10,159	1/6				761	18	6	1906
Simeona Marandellas Estate	Mazoe Marandellas		7,699	15/-				5,774	5	0	1913
		Markwe ...	3,089								
		Mtemwa ...	4,005								
		Bingo	3,190								
		Inore	3,090								
		Mazombi ...	3,620								
		Chiko	3,005	1/-				1,915	16	0	1906
		Njange	2,816								
		Ifudu	2,906								
		Rapaku	3,040								
		Jamba	3,230								
		Zana	3,133								
		Matupki... ...	3,192								
Selous Nek	Mrewa	Marewa	3,386								
		Magarira ...	2,614								
		Zete	3,266	2/6				2,133	12	6	1913
		Selous Nek ...	3,492								
		Nyamademu ...	4,311								
		Total ...	3,680,270					£333,423	10	0	

There is a further area of 7,800 acres acquired by the Company in 1907 by purchase from C.A.P. Weissenborn title to which must be issued to the Company.

55285

Appendix II.

Memorandum.

The report of Lord Cave's Commission,* which was appointed to determine the sum which would have been due to the British South Africa Company in accordance with the terms of the Report of the Judicial Committee of the Privy Council in the Southern Rhodesia Land case, if the administration of Southern Rhodesia by the Company had been determined on the 31st March, 1918, was issued on the 15th of January, 1921. The report of the Commission and the correspondence connected with its appointment are contained in the Parliamentary Paper [Cmd. 1129 (Annexure 1)]. The British South Africa Company had claimed in their letter of the 21st of November, 1918 (No. 1 in [Cmd. 1129]) that interest should be added to the expenditure found to be properly chargeable against the Crown, but the Commission reported that in the circumstances of this case interest should not be allowed. The question of interest was fully discussed in the proceedings before the Commission both in Rhodesia and London—see pages 40—44 and 142—148 of the Volume containing the minutes of proceedings. (Annexure 2.†)

Shortly before the issue of the Report of the Commission, Lord Milner, who was then Secretary of State for the Colonies, had discussed the question of the future government of Southern Rhodesia with the Directors of the British South Africa Company and with the Administrator of Southern Rhodesia with the result that a memorandum was prepared and forwarded to the British South Africa Company for communication to the elected Members of the Legislative Council of Southern Rhodesia. In this memorandum (see annexure 3‡) it was stated that it would devolve upon the new Administration of Southern Rhodesia after the Company's administration had been terminated, to pay that portian of the award of the Commission which would relate to public works and movable assets, and that "with regard to the remainder of the Award the unalienated lands will remain in the hands of the Crown's nominees until the sum due to the Company has been liquidated." Under this arrangement the unalienated land would remain in the hands of the Crown, and the Company would be repaid their deficits out of the proceeds of future sales of the land. In the correspondence relating to the memorandum the Company claimed (*vide* their letter of the 15th December, 1920§) that it would be the sole duty of the Crown's nominees so to deal with the land as most promptly and effectively to secure the liquidation of the sum due to the Company; but this view was not accepted by Lord Milner (*vide* the Colonial Office letter of the 22nd December, 1920.‖)

The arrangement proposed by Lord Milner has been regarded as in accordance with the interpretation of the Southern Rhodesia judgment which was taken by the Attorney-General in his argument before the Cave Commission on the 11th of December, 1919 (see page 101 of the minutes of the proceedings).¶ As it was there pointed out by the Attorney-General, the position under the judgment would appear to be that, before the British South Africa Company are entitled to any payment from public funds from the Crown in respect of the administrative deficits, two conditions precedent must first have been satisfied.

(1) The Crown must have determined the administration of Southern Rhodesia by the Company.

(2) The Crown must have granted away the unalienated lands or the proceeds of those lands to others; and that until these two conditions have been satisfied, the claim of the Company is upon the proceeds of the sales of the lands. This view was repeated by the Attorney-General in the argument upon the question of interest on page 143 of the proceedings.

After the award of the Cave Commission was delivered, and just before Lord Milner left office, the British South Africa Company forwarded to him privately a memorandum (which was subsequently communicated to the Colonial Office officially) regarding what was described as Part II. of the Settlement of the Southern Rhodesia Constitutional question. It will be seen from this memorandum (annexure 4)** that the Company urged that, although Lord Cave's Commission had not awarded interest on the Company's expenditure, nevertheless His Majesty's Government should pay interest to the Company on the Cave Award in cash until the time came that the Company should hand over the administration, and after

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* No. 5 in [Cmd. 1129.] † Stationery Office Publication, May, 1921. ‡ Printed on pp. 15—16 of [Cmd. 1273.] § No. 61355/S in African No. 1085. ‖ No. 61355/S in African No. 1085.
¶ Stationery Office Publication, May, 1921. ** See Appendix III.

that date on the balance of the Cave Award not paid up by the new government. This arrangement was urged largely as being essential to the good government of Southern Rhodesia, having regard to the peculiar position in which the Company found itself under the judgment of the Privy Council with regard to the administration of the land.

Lord Milner, who resigned in February, 1921, was succeeded as Secretary of State by Mr. Churchill, who on 7th of March appointed a Committee, with Lord Buxton as Chairman, to consider certain questions relating to Southern and Northern Rhodesia. The first Report of this Committee, which deals with the question of the future government of Southern Rhodesia, is contained in Parliamentary Paper [Cmd. 1273]. Special attention may be called to Paragraphs 24—28 and 67—75, and Appendix 4 of the Report, as showing the view that was taken as to the position with regard to the unalienated lands after the termination of the Company's administration and the sum then payable to the Company. The Committee suggested the establishment of a Land Board of three members nominated, one, by the High Commissioner for South Africa, one by the Company, and one by the new Southern Rhodesia Government, who would act as agents for the Crown in the disposal of the land, until the whole sum payable to the Company in respect of its deficits had been refunded. The arrangement proposed was strongly criticized, however, by the Company, and a memorandum forwarded on the 18th of May, of which an extract is attached (Annexure 6.*)

The Report of Lord Buxton's Committee was communicated to the elected Members of the Legislative Council of Southern Rhodesia, who adopted a resolution approving in the main the terms of the report, and agreeing that a deputation should visit this country to discuss the details of the suggested new constitution. This deputation is now in London. In view of the general acceptance of Lord Buxton's report by the elected members, draft Letters Patent were prepared providing for the constitution of responsible government in Southern Rhodesia, for discussion with the delegates on their arrival.

It should, however, be explained with reference to the correspondence printed at page 19 of the Buxton Committee's report† that the Elected Members do not accept the view that anything at all is payable to the Company in cash on the termination of their administration except the sum which may be payable under Article 33 of the Charter in respect of buildings and works taken over. All other items they contend merely go to swell the Administrative deficit, i.e., to form a charge on the land. The Company in challenging this view will no doubt refer to Lord Milner's Memorandum of 22nd December, 1920.‡

The particular question of the rights of the British South Africa Company in regard to the lands is dealt with in clause 48 of the draft Letters Patent (Annexure 7).§ It will be observed that, in view of the criticisms of the Company regarding the suggested Land Board, provision was made for the appointment of a single Crown Land agent. The draft Letters Patent were communicated confidentially to the British South Africa Company, and the comments of the Company will be found in the attached letter of the 24th of October, and extract from the memorandum which accompanied it (Annexe 8.‖) The Company state in the Memorandum that they cannot possibly agree to Clause 48, which they regard as wholly at variance with their rights under the Report of the Judicial Committee of the Privy Council. They state that the only position which they would be prepared to accept, and then only without prejudice to any rights against the Crown which the Company may possess under that judgment, is that the control of the land should be left to them with absolute discretion to dispose of it in their own interests as they think best, until the Company's reimbursement is complete.

It may be explained as regards the terms of Clause 48 of the draft Letters Patent that the Clause was drawn up in the light of the system which has existed in Southern Rhodesia of granting land to settlers, which is explained in the attached despatch from the High Commissioner for South Africa of the 8th of April, 1921 (Annexure 9).¶ It will be observed that the forms of land grant provide (Article 8) that the Company shall have the right of resuming possession of the land or any portion thereof for public purposes on payment of compensation and also (Article 15) impose certain restrictions on the removal of natives. It is for this reason that in paragraph 3 of clause 48 of the draft Letters Patent the Crown Land Agent is empowered to dispose of land "subject to any such reservations in the public interest or in the interests of the natives established thereon, as have hitherto been found suitable."

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* An extract from this Memorandum is printed as Appendix IV. † [Cmd. 1273].

‡ See [Cmd. 1273] page 15. § See [Cmd. 1573] for the Draft Letters Patent as published.

‖ No. 53131 in African No. 1085. ¶ No. 20444 in African No. 1085.

It will be seen from the correspondence that there has been a complete divergence of view between the Colonial Office and the Company with regard to the Company's rights in respect to the lands after its administration is terminated.

The Company in fact appear to believe that the judgment of the Privy Council has placed it in the position of a private individual who is entitled to enforce a judgment debt against another individual and takes no account either of the limitations to which the Company itself has in fact always been subject in disposing of land, or of the limitations to which the Crown as opposed to a private person is necessarily subject in disposing of public land.

The attitude of the Company is further illustrated in the attached prints of correspondence relating (*a*) to the question of the payment which may become due to the Company for the land in Southern Rhodesia reserved for administrative purposes or occupied by or necessarily used in connexion with public works and buildings (Annexure 10*); (*b*) the action of the Company with regard to the disposal of land which has been reserved or set aside as public outspans on unalienated land (Annexure 11.†)

In Annexure 8 it will be seen that the Company claim special protection for their interests in the Railways and in their Mineral rights. No provision for protecting the former was recommended by the Buxton Committee or inserted in the draft Letters Patent, because there appears to be nothing in the Privy Council judgment or any other legal reason which entitles the Company to such protection. Further, in addition to certain political considerations, it appeared to be unwise when the Company were standing on their extreme legal rights to make any concession.

The Company's mineral rights stand in a somewhat different position. They were dealt with by Lord Cave subsequently to the award of the Commission (see page 20 of Annexure 5‡), and the Clause (unnumbered) in the Letters Patent was therefore drafted.

In substitution for this draft clause, an amendment of section 28 was subsequently prepared in consultation with the Elected Members, a copy of which amendment is enclosed.

In the letter from the Company now received dated the 7th of November,§ they claim interest on the amount of the Cave Award for the years subsequent to 31st March, 1918, with adjustments for any increase or decrease from year to year, and also, on the termination of the Company's administration, full reimbursement of the administrative deficit as determined. It may be noted in this connexion that the Report of the Cave Commission did not completely determine the sum which would have been due on the 31st March, 1918, since it left over for subsequent determination the sum to be deducted from the Award in respect of the value of the lands appropriated by the Company to its commercial purposes and the proceeds or value of the lands and rights alienated by the Company for considerations other than cash. The Company have asked that these deductions should be settled by agreement between the Company and Crown, but no decision has yet been arrived at as to the steps which should be taken in the matter. A reference to this question will be found in Paragraphs 73—75 of the 1st Report of Lord Buxton's Committee,‖ and also in the reply made by the Company to that Report. It may be added that the Company have sent in accounts for the years ending 31st March, 1919, and the 31st March, 1920, showing the sums which it is claimed would have been due to the Company if their administration had been determined on those dates. The steps to be taken in connexion with those accounts have not yet been decided, as the matter was reserved for discussion with the Southern Rhodesia delegates.

10375

Appendix III.

Memorandum.

On "Part II" of the settlement of the Southern Rhodesia constitutional question discussed by Lord Milner with the Board of the British South Africa Company and the Administrator of Southern Rhodesia.

"Part I" of the settlement is set forth in Lord Milner's memorandum which is

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* See African No. 1085. † See African No. 1085. ‡ [Cmd. 1273].
§ No. 47 in this Volume. ‖ [Cmd. 1273.]

being discussed by the Administrator with the elected members of the Southern Rhodesia Legislative Council. A copy of it is attached (Annexure A*) together with a copy of a cable giving the substance of the elected members' reply to it. (Annexure B.†)

The essence of "Part II" is an arrangement which shall secure to the British South Africa Company the regular payment by His Majesty's Government in cash of interest on that part of the sum found by Lord Cave's Commission to be due to it which is not reimbursed to it by any Government that may succeed its own, the net proceeds of the disposal of land as and when received to be applied to the reduction of the sum on which interest is paid.

When "Part II" was under discussion with the Board and the Administrator it was in contemplation that Lord Cave's Commission would award interest at some rate on the sum found to be due to the Company. The award does not give interest; nevertheless, the Company urges that "Part II" remains necessary for the following reasons:—

(i) No government of a young and growing colony like Southern Rhodesia can govern as it should unless in dealing with the vacant land it is able to have due regard to considerations of public policy.

(*cf.* Lord Watson "The object of the Government in giving off public lands to settlers is not so much to dispose of land to pecuniary profit as to attract other colonists." Cooper versus Stuart, 58 L.J. Privy Council, 93. A case affecting land in Australia.)

More especially is this the case when the colony contains not only a growing white population but a large aboriginal native population.

Good government, in this respect, is impossible if (in the absence of "Part II") the land is left "in pawn" in the hands of the Company which, though still charged with the duty of administration, owes it as an elementary duty to its shareholders to extract every penny of cash that it can get from the land, regardless of questions of public policy, in order *pro tanto* to effect their reimbursement for what they have admittedly spent out of pocket on the Crown's account.

For example, while the native reserves are quite sufficient for the purposes for which they exist, the Administrator has lately called the Board's attention to the fact that they are not always sufficient, nor were they intended, in addition, to provide room for wealthy individual natives who have accumulated very considerable herds of cattle of their own. Yet they must be able to live and keep their cattle somewhere. There is nothing in the law to prevent them buying land and holding it in individual tenure anywhere; but there are serious administrative objections to their doing so in areas where European settlement is taking place, since friction between black and white is sure to follow. The natural course which good government would suggest would be to retain considerable areas, adjoining native reserves but outside them, within which individual natives alone should be allowed to buy land, European applicants for it being refused. This is what the Administrator has suggested in a particular case in point. A relevent extract from a recent letter from him on the subject is attached (Annexure C‡). Yet, from the point of view of its shareholders, as above explained, why should the Company sell to natives at "current market prices" now if it thinks that it is likely to do better by waiting for a time and why in any case should it rule out all European applicants, a course of action which must tend to keep the price of the land down by restricting the effective competition for it?

The Elected Members naturally object to the land remaining "in pawn," as this tends to restrict its free use for the purpose of encouraging British immigration and settlement or for other desirable governmental purposes.

(ii) In the particular circumstances of to-day the position in Rhodesia is almost impossible in the absence of "Part II." Lord Milner (see "Part I," Annexure A*) has expressed the wish that the Company should carry on its Administration, amicably with the elected members, for another three or four years. But this means that the Company would stand out of interest on the whole "Cave sum" for the whole of that period, and involves a further and very large loss to the Company's shareholders. In terms of "Part I" the Company would, at any rate, become entitled immediately on the termination of its administration to a big sum in cash from its successors—something over £1,800,000 (see calculation in note attached Annexure D)—apart from the claim it would have against His Majesty's Government for the balance of the "Cave sum" in cash.

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* See pp. 15—16 of [Cmd. 1273]. † See pp. 16—18 of [Cmd. 1273]. ‡ Not printed.

In these circumstances it is not in human nature to expect the Company to govern with the desire that its Government should last for the three or four years, since it is overwhelmingly to its interest that it should not. This does not make for good government.

Lord Cave observed, in the course of the Attorney-General's argument against the Company's claim for interest, " Perhaps we have nothing to do with the practical consequences, but upon that basis here is a large debt due to the Company which would be only paid with its own land or out of its administration and carrying no interest. It is a tremendous inducement to the Company first of all to sell the land, and, secondly, to lay down its administration at the earliest possible moment. Possibly those are considerations with which we are not concerned, but I cannot help seeing the practical results " (transcript of proceedings of the 13th day, page 64).*

Lord Cave eventually decided against the Company's claim for interest, but the justice of his observation above quoted remains unaffected, and applies precisely to the question of " Part II."

(iii) The figures in Annexure D will have shown that it is at least open to grave doubt whether local responsible Government in 1924 (without direct financial help from His Majesty's Government) in terms of Lord Milner's statement " Part I " (Annexure A†) interpreted in the light of the Cave award will be a financial possibility. It must be borne in mind that the contemplated Rhodesian Government will own not an acre of land except that on which the public works stand, not a mile of railway and no mineral rights. Pressure from the elected members (see Annexure B) is bound to be all in the direction of modifications of " Part I " designed to make Responsible Government easier by diminishing the sum immediately payable by the new Government to the Company in cash. Failing " Part II " the Company is bound to oppose all such modifications, for they can only have the effect of increasing the balance of the Cave award which, unless the Company succeeds in recovering it from His Majesty's Government it can only get it out of the proceeds of the disposal of lands as and when they accrue—and that under a government other than its own which will have no interest in seeing that its reimbursement is honestly or promptly effected.

Given " Part II " all the above difficulties at once disappear.

The steps necessary to carry out " Part II " would be as follows :—

(1) His Majesty's Government would pay interest to the Company on the " Cave sum " (say, about £4,000,000) in cash until the time comes for the Company to hand over the administration to others. Thus the Company would then have no reason to seek to expedite the date of handing over.

(2) When the date of handing over comes His Majesty's Government would make it a condition of the change that the new Government should pay up to the Company such portion of the " Cave sum " as His Majesty's Government thought proper (see " Part I," Annexure A, which might be modified without objection on the part of the Company if His Majesty's Government pleased), His Majesty's Government continuing to pay interest to the Company on the balance of the " Cave sum " not paid up by the new Government. Thus the Company would have no reason to seek to delay the date of handing over provided that its railway and mineral interests were reasonably secured against being plundered by the new Government.

(3) The land would continue to be dealt with both before and after the change of Government either by the Company or by any other nominees of the Crown, as His Majesty's Government pleased, upon the terms that all net proceeds should be retained by the Company and applied to the reduction of the sum upon which the Crown was paying interest until the whole sum was wiped off, any remaining balance of the land being then handed over to the local Government to use as it pleased. The Company or other nominees of the Crown in dealing with the land would be guided by any instructions which His Majesty's Government might give them. The object of His Majesty's Government would presumably be to secure the wiping off of the sum upon which it was paying interest to the Company as soon as possible, but subject always to those considerations of public policy which the Company would be practically obliged to disregard if it were merely left to effect its own reimbursement out of the land for itself. The sum awarded to the Company by Lord Cave's Commission is not so large as to make the plan suggested above impossible of execution; nor would it fairly be argued that the plan itself is unduly liberal to the Company.

1st February, 1921.

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* Page 144 of Minutes of Proceedings (Stationery Office Publication, May, 1921).

† Pp. 15—16 of [Cmd. 1273].

Annexure D.

Note.

The statement on the question of the future government of Southern Rhodesia, which Lord Milner has authorized Sir Drummond Chaplin to discuss with the Elected Members contemplates responsible government by the end of 1924 on certain terms.

Such a government, if instituted, will have at once to repay :—

(i) Such advances as His Majesty's Government will have made during the next three years to the present Administration for capital expenditure on public works, say, £450,000.

(ii) That portion of the Cave Award which will *relate to* public works, *including* the obligations of the Crown under Clause 33 of the original Charter and Clause 3 of the Supplemental Charter. Now the Cave Award includes £860,295 for expenditure on roads and depreciation of public works. If so much of this as represents expenditure on roads up to 31st March, 1918, viz., £252,315, be deducted as something which the new Government will not be expected to pay for, this leaves £607,980 for depreciation of public works alone.

But the Cave Award also makes it clear that the new government will in addition have to pay for the value of the public works which it takes over. The value must be the cost less the depreciation (since the depreciation has been fixed by the Commission and must be taken as fair), and this comes to £831,243, the figure being arrived at as follows :—

Total cost of Public Works and Roads ...		£1,691,538
Deduct depreciation of Public Works ...	£607,980	
Deduct cost of roads	£252,315	£860,295
		£831,243

Thus depreciation ... £607,980
Value £831,243

£1,439,223 must be that portion of the Cave Award which relates to public works, including the obligations of the Crown under the Charter.

N.B.—This assumes that the New Government will take over all the public works, but that assumption must be, roughly, justified.

(iii) Movable assets, £249,407.

(iv) Though Lord Milner's statement does not mention it, it seems fair to assume that the new government will also have to pay for the "debtor balances less creditor balances," £112,921, since, as the sums which these balances represent are paid off, they will be paid, in the absence of any special arrangement about them, to the new government.

N.B.—The above figures are taken as at 31st March, 1918, because the Cave Award deals with the figures as at that date. The figures in 1924 cannot be very materially different. Thus the new Government will have at once to pay up (v. supra.).

	£	
(i)	450,000	(Payable to His Majesty's Government.)
(ii)	1,439,223	(Payable to B.S.A. Company.)
(iii)	249,407	
(iv)	112,921	

£2,251,551 plus a further sum payable to the B.S.A. Company, which it is impossible to estimate now for the value of the land occupied by or necessarily used in connexion with the public works taken over. The Milner statement makes it clear that this value will have to be paid by the new government in addition to the value of the works themselves.

To possess itself of the unalienated land it would further have to pay up the balance of the Cave Award, i.e. :—

Total of Award			£4,435,225
Deduct (say)	(£2,250,000	(v. supra)	
Less	831,243	(Value of public works not covered by Cave Award.)	
	1,418,757		
Less	450,000	(Advances by His Majesty's Government not covered by Cave Award.)	
	968,757		968,757
			£3,466,468

Less a figure still unknown representing the value of the Crown land taken by the Company for its own purposes or granted for consideration other than cash. In any case the new government would have to pay up over £3,000,000 in order to possess itself of the unalienated land.

24377

Appendix IV.

(*Extract from Memorandum forwarded by the British South Africa Company, on the 18th May*, 1921.)

II.—Land, Financial and Commercial Questions.

Paragraphs 67 to 71 of the Report* treat of the question of the unalienated land. The arrangement which the Committee suggest for dealing with this matter is one which it must be said at once that the British South Africa Company could in no circumstances accept and against which they are bound emphatically to protest.

The operative portion of the Privy Council judgment quoted in Paragraph 24 of the Report has never received judicial interpretation. The Company's view is that upon the determination of their administration they are entitled under the judgment to due reimbursement in some form or other by the Crown of the aggregated advances made by them for administrative purposes. The judgment indicates that primarily such reimbursement might be effected by further sales of lands. This is clearly on the assumption that the Crown dealt with those lands in the manner best calculated to effect such reimbursement.

The Company consider that their view is clearly supported by the fact that the judgment goes on to say that, if the Crown should not so deal with the lands and should, for example, grant them away, the due reimbursement would then be provided from public funds. It is true that Lord Milner informed the Elected Members, as the Committee recall in Paragraph 26 of the Report, that "the unalienated land would remain in the hands of the Crown's nominees until the sum due to the Company had been liquidated," but it will be recollected that the Company in their letter to the Colonial Office of the 15th December, 1920,† in which they commented on the draft of Lord Milner's statement described as the " sole duty " of the Crown's nominees that of "so dealing with the land as most promptly and effectively to secure the liquidation of the sum due to the Company, a duty which they could not perform unless their hands were entirely free."

To that position, notwithstanding Lord Milner's dissent, the Company adhere. It will further be recollected that the Company made it clear that their concurrence in the draft of Lord Milner's statement was given " without prejudice to any claim which the Company as agent of the Crown will have against the Crown in respect of the Cave Award."

To the Company it appears altogether inconsistent with the language used in the last paragraph but two of the Privy Council Judgment that the Crown should claim not only the right which it admittedly has to take away the Company's right " to continue to conduct the realization of the unalienated lands for the purpose of accomplishing its own reimbursement," but the right, in effect, "to take away

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* [Cmd. 1273]. † No. 61355 in African No. 1085.

from the Company a right already accrued" to "due reimbursement," by dealing with the land in any other way or for any other purpose than that of making the fullest and promptest reimbursement possible, unless the Crown prefers to reimburse from public funds. Yet this is what would result from the arrangement which the Committee suggest; for if the Crown, after the Company's administration of Southern Rhodesia had come to an end, could claim to keep the land in its own hands, and merely to make such reimbursement to the Company as the proceeds of the land, whatever they might be, as and when they accrued would provide, it is obvious that the Company's reimbursement could be indefinitely delayed or altogether defeated. Such delay or defeat would be certain under the system suggested.

That system would further "the general interest of the development of the country," which may well require "that the land should be disposed of at comparatively low prices" the "total actual receipts from the sale of the land" being treated as of "minor importance," to the neglect of the Company's interest "that the land should be so dealt with and disposed of, as to produce the largest possible amount of cash and as speedily as possible."

It is suggested that the Company should have only one representative on the proposed Land Board, the Government of Southern Rhodesia one, and the Imperial authority one; and that the power of decision in case of dispute should lie with the Imperial authority, that is to say, with the High Commissioner, or, at his discretion, with the Secretary of State. The conflict of interests which would inevitably arise on such a Board is clearly stated in Paragraph 69 of the Report. It is impossible to doubt that the bias of the Imperial authority would always be on the side of the Colonial Government. On the one hand, under the system proposed, the Imperial authority would have nothing to gain from the prompt and full reimbursement of the Company; on the other, there would, as has already been pointed out, be so many occasions for friction in other matters between the Imperial authority and the Colonial Government that the Imperial authority would inevitably be anxious to avoid multiplying them by disputes with the Colonial Government over land matters in which the Imperial authority would not be directly interested.

The Company most fully agree that the unalienated land should be at the free disposal of the Colonial Government "in the general interest of the development of the Country, and with a view to attracting settlers."

* * * * * *

But there is only one way by which, if local Responsible Government is to be set up, this desirable position can be reached, and that is by the Company being paid the sum which the Privy Council Judgment declares is their due by His Majesty's Government, the latter making such arrangements as may seem to themselves proper for their own recoupment from the Colonial Government. If His Majesty's Government refuse that course, it can only be because they do not believe that their recoupment could be made effective if the real control of the land were in the hands of the Colonial Government. The Company may be pardoned for entertaining the same scepticism in their own case.

It follows that the Company cannot accept the suggestion that the matters referred to in Paragraph 74 of the Report of Lord Buxton's Committee should be referred to the proposed Land Board. They object altogether to the proposals for the constitution of that Board; and even if it were set up they would regard it as a body wholly unsuitable to decide upon such questions as are referred to in Paragraph 74.

They reiterate their conviction that the only way of arriving at a settlement at once prompt and fair of the questions referred to both in Paragraph 74 and in Paragraph 75, is by an agreed arrangement made direct between themselves and the Secretary of State. They would again appeal to the Secretary of State to discuss the possibility of such an arrangement with them. They cannot believe that if the matter were approached in a reasonable spirit on both sides, as it naturally would be, it would be found impossible to arrive at a fair settlement. If the attempt should unfortunately fail, they would be prepared to accept the Committee's suggestions made in Paragraph 75 (though not those made in Paragraph 74), but the adoption of the suggestions in Paragraph 75 would involve much delay and expense, which in the Company's opinion, can be and ought to be avoided, in the conclusion of a matter in which it is of urgent importance to arrive at a speedy and final settlement.

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